

LAWS GOVERNING  
THE  
DUTIES OF COUNTY COMMISSIONERS  
AND  
TOWNSHIP TRUSTEES

PREPARED BY  
THE STATE BOARD OF ACCOUNTS  
1915



Class JS451

Book I 62

1915







# INDIANA STATUTES

RELATING TO

## Boards of County Commissioners and Township Trustees

Concerning Their Duties, Powers and Prohibitions

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ISSUED BY THE  
STATE BOARD OF ACCOUNTS

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*Indiana, 1915*

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WM. B. BURFORD, CONTRACTOR FOR STATE PRINTING AND BINDING

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# PREFACE.

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The offices of County Commissioner and township trustee are two of the most important to the taxpayers of the State, for the reason that such officers expend for various purposes, as provided by law, practically three-fourths of the taxes paid by the taxpayers. Such officials should, therefore, know the law governing the expenditure of the various funds coming into their hands.

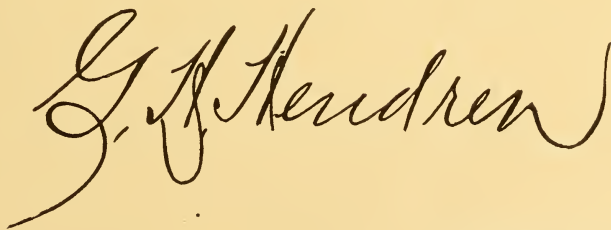
The laws governing these two important offices have been compiled by this department in separate volumes. The stupendous task of separating and compiling the laws pertaining solely to the duties of these officers and the elimination of all laws repealed directly or by implication has been performed by Mr. George Pence, an expert field examiner, with the assistance of and under the close scrutiny of Mr. George M. Crane, the legal clerk of this department.

I believe that these two volumes are not to be compared with any similar publications of the laws governing the duties of these officials.

I further believe that the information to be derived by such officials from these volumes will be of great value to them, and that the faithful compliance therewith by said commissioners and trustees will save the taxpayers of Indiana tens of thousands of dollars annually.

A copy of the volume concerning the duties of both the County Commissioners and township trustees will be mailed to each of the 276 County Commissioners, the 92 county auditors and the 92 county attorneys of the State.

A copy of the volume concerning the duties only of township trustees will be mailed to each of the 1,016 township trustees of the State.

A large, elegant handwritten signature in dark ink, reading "G. H. Hendren". The signature is written in a cursive style with a large, sweeping initial "G" and a long, horizontal flourish extending to the right.

*State Examiner.*

STATE BOARD OF ACCOUNTS,  
Indianapolis, Indiana, May 1, 1915.





# BOARD OF COUNTY COMMISSIONERS.

## FOREWORD.

The intent of this compilation is to give the gist of all statutes of the State governing Boards of County Commissioners. Reference should be had to the statutes for more extended information.

The number when used in the date line, of such section, herein, refers to the section in Burns R. S. 1914. In a few cases it has been deemed wise to set out the act entire.

Tables of Areas and Population of each county are set out in sections 177 and 178, to enable Boards to apply the law governed by area or population of the county.

The terms "Board" and "Council" in this book refer to the Board of County Commissioners and the County Council, respectively.

EDITOR.

## ADMINISTERING OATHS.

(Acts 1 R. S. 1852, p. 224, Sec. 5984.)

**1. Oaths administered—Preservation of Order.** Members of the Board, as well as the county auditor, are empowered to administer all oaths necessary to be administered in transacting business with the Board. The Board shall have power to preserve order, when sitting as such, and to punish contempts by fine not exceeding \$3.00, or imprisonment not exceeding 24 hours; may enforce all orders made by them by attachment or other compulsory process; and execution shall issue when such fines are not paid.

**Note:** See *Garrigus v. State*, 93 Ind. 239.

## ADVERTISING AND PUBLICATION.

(Acts 1881, S. p. 240, Sec. 1343.)

**2. Publication in English language.** All official matters shall be published in the English language.

(Acts 1913, p. 154, Sec. 1347.)

**3. When publication in two newspapers.** In all cases wherein the auditors and treasurers and township trustees of the several counties of this State are required by law to publish notices and reports affecting county and township affairs in a public newspaper, said auditors and treasurers and township trustees are hereby required to publish said notices as by the several statutes required in two newspapers published in their respective counties, representing two political parties casting votes in such counties respectively at the last preceding

general election, one of which notices or reports shall be published in a newspaper representing the party casting the highest number of votes at said election, if there be such newspapers published in said county; and in case there are not published in said county newspapers representing two political parties casting votes at the last preceding general election, then in that case one of such notices or reports shall be published in an independent newspaper.

**Note:** As to limitation of number of newspapers, whether one or more, and the penalty for the violation of the law, see Sec. 5968 Burns R. S. This book, Sec. 201.

**Note:** For publication of court's allowances, as required by Sec. 6015 Burns R. S., see Sec. 6, this book.

(Acts 1879, S. p. 130, Sec. 9604.)

**4. Legal rates for advertising.** All legal advertising, except the printing of the delinquent tax list, for the county is to be done at rates fixed by statute, to be allowed by the Board and paid from the county treasury. For each advertisement, per square of 250 ems, \$1.00; for each additional insertion, 50 cents. Such advertisement to be set in solid reading type of same body of ordinary business advertising in which said paper is set, and without padding.

In case of inability to procure such rates, it shall be sufficient to post up written or printed notices as the law requires, and the newspaper advertisement can be dispensed with.

**Note:** To the same effect see Sec. 5964 Burns R. S., Sec. 182 this book.

(Acts 1891, p. 199, Sec. 10355.)

**5. Legal rates for delinquent tax.** The expense of printing the delinquent tax list shall not exceed 20 cents for each description.

**Note:** See *Butler v. Board of Commissioners*, 177 Ind. 440.

(Acts 1899, p. 415, Sec. 6015.)

**6. Legal rates for court allowances.** The auditor, under act of 1899, at p. 415, is required to publish all allowances in a newspaper of general circulation. The cost of printing same shall not exceed 5 cents for each allowance.

This must be done within ten days after the adjournment of any term of the Board, the circuit, superior and criminal courts.

The publication must include the allowance made, to whom made and the purpose.

**Note:** The Board passes upon the claims for making the publication. In the absence of a contract a reasonable sum only should be paid, and in no case to exceed 5 cents per allowance.

**Note:** See *Butler v. Board of Commissioners*, 177 Ind. 440.

(Acts 1913, p. 761, Sec. 1346a.)

**7. Lawful to publish in daily newspaper.** It shall be lawful to make legal publications in a daily or weekly newspaper covering county requirements.

**ARREST, FREEDOM FROM.**

(Acts 1 R. S. 1852, p. 104, Sec. 3302.)

**7b. Member's privilege from arrest.** Members of Board are privileged from arrest, and from obeying any subpoena, during any session, and while going to and returning from the same.

Likewise, all persons while engaged in necessary attendance upon any court, and in going to and returning from same.

**AGRICULTURAL.**

(Acts 1873, p. 118, Sec. 6071, 6072.)

**8. Board may purchase fair grounds.** Upon a petition of a majority of the voters in any county, it shall be lawful for the Board to purchase, in the name and for such county, real estate for the purpose of agricultural and horticultural fairs. The limit in cost for such real estate and improvements is \$5,000, and the conveyance is required to be made to such county by a good and sufficient warranty deed, together with grantor's abstract of title properly certified, showing clear title.

(Acts 1873, p. 118, Sec. 6073.)

**9. When board may resell fair grounds.** If, at any time after the purchase of such fair grounds the same shall no longer be an eligible location for fairs or shall cease to be necessary, then it shall be proper for the Board to sell and convey all, or any part thereof, for the best price it will bring; and turn the proceeds into the county treasury.

**Note:** For procedure for sale of real estate of county see Secs. 5900 and 5951 Burns R. S., Sec. 203 of this book.

(Acts 1905, p. 108, Sec. 6074.)

**10. Fair grounds when used for parks.** In counties where the Board has purchased real estate in the name of the county, under act of March 8, 1873, to be used for agricultural and horticultural fairs, and which has been abandoned for such purposes, it shall be lawful for the Board to authorize its use for park purposes under certain conditions.

(Acts 1905, p. 108, Sec. 6075.)

**11. How parks maintained.** The Board shall expend no money for the maintenance of such grounds for park purposes, but by its order may permit its use to any city or cities whose limits approach within one mile therefrom, specifying the conditions, restrictions and limitations of the use of such grounds.

(Acts 1905, p. 108, Sec. 6077.)

**12. When two or more cities accept.** When two or more cities, lying within the limits of one mile, may join in the acceptance of the use of the abandoned fair grounds, by their common councils, and agree upon a fair and equitable basis for such care and maintenance of such park, the agreement shall also be approved by the Board.

(Acts 1905, p. 108, Sec. 6078.)

**13. Title of grounds in county.** The title to such lands shall remain in the county; and the use of the land, for such park purposes, shall continue as long as so maintained by such city or cities.

(Acts 1905, p. 108, Sec. 6079.)

**13a. When abandoned as a park.** If at any time after such land has been accepted for park purposes and shall be abandoned by such city or cities, it shall then be lawful for the Board to sell all or part of such land for the best price it will bring, and turn the proceeds of sale into the county treasury.

#### **14. LANDS USED FOR PARK PURPOSES.**

(Acts 1915, p. 682.)

A supplemental act of 1915 authorizes the sale of fair grounds that have been used for park purposes by counties to cities, and provides that the Board shall use the proceeds of such sale in the purchase or leasing of other lands for agricultural fairs.

The Board shall turn over the possession of the land so leased or purchased to any agricultural society for the purpose of holding agricultural fairs. It is further provided that the Board may construct a coliseum or auditorium for the purpose of agricultural display. The act is of local importance only and reference is made to the act.

#### **AGRICULTURAL SOCIETIES.**

(Acts 1877, p. 3, Sec. 6080.)

**15. When county makes allowances to.** The Board of any county containing taxable property of the value of \$20,000,000 as shown on the tax duplicate of 1876, may, in its discretion, make allowance out of the general fund to any agricultural society, or organization proposed for the promotion of the agricultural and horticultural interests of the county, subject to certain provisions.

**Note:** This allowance is in effect a loan and obtains only to the followings counties, viz.:

Allen, \$21,387,550;  
Marion, \$100,050,277;  
Tippecanoe, \$22,157,324;  
Vanderburgh, \$23,133,945;  
Vigo, \$23,907,187;  
Wayne, \$24,882,060.

(Acts 1877, p. 3, Sec. 6081.)

**16. Official statement—Limit of allowance.** Before such allowance the president or secretary of the association shall file with the Board his sworn statement showing amount expended for fair grounds and permanent improvements, and amount necessary to complete the same; whereupon the Board may make allowance as may be deemed necessary, not exceeding \$10,000, and not exceeding one-half of the moneys shown by such officer's statement to have been so expended.



(Acts 1877, p. 3, Sec. 6082.)

**17. Allowance a lien on property.** The amount thus appropriated by the Board shall be a lien on the real and personal property of the association, and all dividends by the incorporators or stockholders shall be withheld until the appropriation made by the Board shall be repaid to the county treasury, with interest.

(Acts 1889, p. 310, Sec. 3231.)

**18. Allowance to interstate associations.** The act of March 9, 1889, provides for the Board of any county containing taxable property of value of \$20,000,000, or more, at its discretion, to make an allowance, as aid, to an interstate fair association organized under the act.

The limit of such aid to be paid from the general funds of the county is \$10,000, and which in no case can exceed one-half expended on grounds and improvements as shown by verified statement of the association.

(Acts 1905, p. 175, Sec. 3197.)

**19. Allowance made as donations.** County councils and Boards are authorized to appropriate and pay any regularly organized agricultural society of the county a sum not exceeding one cent on \$100 taxable valuation of the county, payable on account of expenses and premiums, out of the general fund of the county; none of such moneys to be used or given for contests of speed.

(Acts 1905, p. 175, Sec. 3198.)

**20. When more than one association.** Where there are two or more organized fairs or exhibitions, within the county, the Board may appropriate to each as may be deemed proper and equitable, being limited in the aggregate to the sum equal to one cent on the \$100 valuation.

(Acts 1911, p. 80, Sec. 4.)

**21. Allowances for farmers' institute.** For the purpose of defraying the local expenses of meetings held under the above act, viz.: "to promote the improvement and advancement of agricultural culture, domestic science and rural life", the chairman of the county farmers' institute is authorized to file an itemized list of expenses, for the payment of which, when approved by the Board, the auditor is authorized to draw warrants to an amount not to exceed 25 cents for each square mile of territory in such county.

**Note:** This act is not found in Burns R. S. It repeals Secs. 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217 and 3218 Burns R. S. 1914.

(Acts 1913, p. 763, Sec. 6868.)

**22. Donations to aid agricultural school.** Whenever a donation is made to the county of any building, together with the necessary grounds, of the value of not less than \$10,000 in counties with a population less than 25,000, or of the value of \$20,000 in counties with a

population in excess of 25,000, for purposes of maintaining a high school or agricultural school, it shall be the duty of such Board to accept the donation for the purpose named.

(Acts 1913, p. 18, Sec. 4276d.)

**23. Contributions to forestry association.** In counties where associations are organized under this act, to plan, protect and cultivate forestry lands, it is lawful for the Board to assist in acquiring and maintaining the same by contributions from year to year, as may be determined at the time of making or adoption of the ordinance therefor.

#### ALLOWANCES.

(Acts 1899, p. 415, Sec. 6015.)

**24. Publication of courts' allowances.** The auditor is required to publish in a newspaper of a general circulation in his county within ten days after the adjournment of any term of circuit, superior, criminal or commissioners court, all allowances made by the regular or special judges thereof, and by the Board at each term of court at which any allowance is made, setting out each allowance, to whom made and for what purpose, provided that the cost of printing thereof shall not exceed five cents for each allowance.

**Note:** By an act approved March 15, 1913, Sec. 1346a Burns R. S., it shall be lawful to make such publication in either a daily or weekly newspaper. The Board passes on claims for making publication under this section. The section does not fix the compensation at 5 cents, but limits it to 5 cents per allowance. A reasonable sum only should be paid. See *Butler v. Board*, 177 Ind. 440.

(Acts 1879, S. p. 130, Sec. 6016.)

**25. All extra allowances forbidden.** Extra allowances, unless in cases of indispensable necessity, to be found and made a matter of record, and unless specifically required by law, cannot be made by the Board, to any auditor, clerk, sheriff, assessor or treasurer, directly or indirectly, or to any clerk, deputy, bailiff or any employe of such officer; nor shall the Board employ any person to perform any duty required by law of any officer, or for any duty to be paid by commission or percentage.

For a violation of these provisions, each member of the Board favoring the same shall be guilty of a misdemeanor and on conviction be fined from double to five times the amount of such allowance, and may be imprisoned in the county jail for not over 60 days.

When found necessary, and so entered of record, to make such employment, as a public necessity, claimant shall file his bill ten days before beginning of term and any taxpayer shall have the right to contest the claim.

**Note:** The indispensable public necessity must be actual, not imaginary. The finding that an indispensable necessity exists is not conclusive, but is subject to review by the court on appeal. *Board v. Mitchell*, 131 Ind. 370, at page 373; *Haun v. State*, 108 N. E. Rep. 519.



(Acts 1879, S. p. 107, Sec. 6017.)

**26. Allowances unpaid for five years.** At the regular March session, it is the duty of the Board to carefully review the unpaid allowances, and all of such which have remained uncalled for for a period of five years shall be cancelled and placed to the credit of the funds from which such were made payable.

The auditor is required to have published such unpaid allowances, at a cost of not to exceed five cents, each, for at least 30 and not more than forty days prior to such March session.

**Note:** By virtue of the county council act (Sec. 5941 Burns R. S.), unexpended appropriations revert to the general fund of the county at the end of each calendar year.

### ANIMALS RUNNING AT LARGE.

(Acts 1879, S. p. 62, Sec. 3242.)

**27. Power of the Board to regulate.** It shall be the duty of the Board to direct by an order duly entered of record what kind of animals shall be allowed to pasture or run at large on the unenclosed lands or public commons within the bounds of any township; and when the said township, or certain parts are divided by a river or a railroad, may also order that stock may run at large on one side of said river or railroad, and not on the other, in the same township.

(Acts 1 R. S. 1852, p. 102, Sec. 3244.)

**28. When taken up and impounded.** Whenever any animal is found running at large upon any unenclosed land which shall not have been specified in the order of the Board, any resident can take up and impound said animal.

**Note:** This section was not repealed by Sec. 3249. *Frazer v. Goar*, 1 App. 38. Animals running at large, 1 App. 222.

(Acts 1887, p. 38, Sec. 3249.)

**29. Duty of the road supervisor.** It is the duty of all road supervisors upon view or information to take up and impound any animal found running at large on the roads or unenclosed lands within their respective districts, which are not authorized to run at large by order of the Board.

**Note:** Supervisors must comply with statute. *Wyman v. Turner*, 14 App. 118.

### APPEAL BONDS.

(Acts 1885, p. 80, Sec. 6019.)

**30. When appeals lie to circuit court.** Any person feeling aggrieved with any decision of the Board on account of rejected claims or disallowance in part, may appeal within 30 days to the circuit or superior court, upon filing a sufficient bond to the Board for costs, or such person, at his option, may bring action against the county. In the event his recovery is no greater than the Board's allowance such plaintiff shall pay the cost of the appeal.

(Acts 1875, p. 112, Sec. 1354.)

**31. When bond is defective.** In all cases where appeals to the circuit court are taken from the Board, and the appeal-bond filed is defective; when required by the court, appellant may cure such bond by filing a new one to the satisfaction of the court.

(Acts 1885, p. 80, Sec. 6019.)

**32. When appeals do not lie to circuit court.** No appeal from the decision of the Board is allowable for rejection of a claim made for voluntary services or for things voluntarily furnished; besides, it is unlawful for the Board to allow any such claims.

(Acts 1 R. S. 1852, p. 224, Sec. 6021.)

**33. Appeals generally.** When a party not named in the proceeding is aggrieved, his appeal does not obtain unless he shall file with the auditor his affidavit setting forth his aggrievance and alleging specifically the nature of his interest.

The courts have decided that appeals from the Board's decision only lie where such involve judicial action, and not where Board acts in a ministerial or administrative capacity.

**Note:** See *Jay v. O'Donnell*, 178 Ind. 282.

(Acts 1 R. S. 1852, p. 224, Sec. 6023.)

**34. Duty of auditor—When appeal.** In case of any appeal to the circuit or superior court from the decision of the Board, a sufficient appeal bond being filed, it becomes the duty of the auditor, within 20 days, to make out a complete transcript of the proceedings of the Board relative to the proceeding and deliver same, with all appertaining papers, together with the appeal bond, to the clerk of the court to which the appeal has been taken.

#### APPOINTMENTS BY THE BOARD.

(Acts 1 R. S. 1852, p. 223, Sec. 9140.)

**35. Duty of auditor—When Board appoints.** Appointments made by the Board shall be certified by the county auditor, under the seal of the Board.

#### APPROPRIATIONS.

(Acts 1879, p. 30, Sec. 6098.)

**36. No appropriation, when no money.** It is unlawful for the Board to make any appropriation of money, or order to pay money, unless at the time the money to pay the same be in the treasury or provided for.

#### ARBITRATION.

(Acts 2 R. S. 1852, p. 227, Sec. 875.)

**37. Arbitration of claims prohibited.** The courts have held that county Boards cannot submit claims against the county to arbitration.

**ASSESSOR, COUNTY.**

(Acts 1891, p. 199, Sec. 10275.)

**38. Bond of—Vacancy how filled.** The term of county assessor is four years; his official bond being in the sum of \$5,000, with two or more freehold sureties, to be approved by the auditor. If any vacancy shall occur in such office, the Board shall fill the same at any regular meeting for such unexpired term.

**AUDITOR.**

(Acts 1 R. S. 1852, p. 224, Sec. 5979.)

**39. Duty to attend Board's meetings.** The auditor of the county shall attend the meetings of the Board and keep a record of its proceedings.

(Acts 1889, p. 427, Sec. 9457.)

**40. Bond of—Approval of.** The county auditor before entering the duties of his office shall give bond in the penal sum of \$10,000 to be approved by the Board.

**Note:** This section supersedes the amount of bond mentioned in Sec. 9456 Burns R. S.

(Acts 1 R. S. 1852, p. 224, Sec. 5987.)

**41. To keep record of proceedings.** The proceedings and determination of all matters properly coming before the Board at its sessions must be recorded by the auditor in a book to be kept for that purpose. All books, records, accounts, vouchers and papers touching county affairs are to be carefully kept by the auditor, and shall be open to the public for inspection.

(Acts 1 R. S. 1852, p. 150, Sec. 9458.)

**42. Clerk of Board of Commissioners.** The auditor, by virtue of his office, shall be clerk of the Board, and shall keep an accurate record of all the corporate proceedings of such Board. He is the custodian of all books, records, maps and papers deposited in his office, which he shall deliver to his successor at the expiration of his term.

(Acts 1907, p. 391, Sec. 7527.)

**43. Secretary of County Board of Finance.** He is likewise, ex-officio, secretary of the County Board of Finance, which Board is constituted by the members of the Board. Likewise, such officer is ex-officio clerk of the county council.

(Acts 1 R. S. 1852, p. 150, Sec. 9467.)

**44. Can not act as attorney.** No person doing the duties of auditor shall practice as an attorney before the Board in his county.

(Acts 1905, p. 584, Sec. 2391.)

**45. Officers and deputies.** This prohibition obtains as well to the clerk of the circuit court, treasurer, recorder, sheriff, or deputy of any one of them. Its violation is an offense, and on conviction punishable by a fine of \$25 to \$500.

(Acts 1 R. S. 1852, p. 150, Sec. 9469.)

**46. When Board may appoint for the time.** In case of the inability of the auditor, without a deputy, or having one he is unable to attend, the Board may deputize some person to perform the duties, for the time being, during the session of the Board.

### **BAILIFFS.**

(Acts 1913, p. 161, Sec. 5980.)

**47. Bailiff in Marion County.** Boards of counties having a population of 150,000 (Marion County) according to last preceding U. S. census shall appoint a bailiff of the commissioners' court. Besides the regular duties of bailiff, in addition he shall perform such clerical duties as required and directed by the Board. His compensation shall be fixed by such Board, not to exceed \$125 per month.

### **BEGINNING OF TERMS.**

(Acts 1901, p. 411, Sec. 9148.)

**48. When term of office begins.** Under an act approved March 11, 1901, the term of office of the county auditor, county sheriff, county recorder, prosecuting attorney, county assessor, county coroner, county surveyor and county commissioners, shall begin on the first day of January next following the term of office of its present incumbent.

### **BENEVOLENT INSTITUTIONS—STATE.**

(Acts 1865, p. 124 Secs. 3429-3430.)

**49. Limit of \$40 for clothing, annual.** When the expense of clothing and means for defraying the traveling expense of a beneficiary of the privileges of the State institutions for the education of the blind, the deaf and dumb or the hospital of the insane, are not otherwise provided, same is to be supplied by the superintendents of such institutions and charged to the county of admission. Amounts are reported to the treasurer of state, who forwards to the county treasurer for payment. Such amount is limited to \$40 per year, and it is intended that the county treasurer shall collect the amount, by suit if necessary, from the parents or estate of such pupil.

(Section 3431.)

**50. County pays funeral expenses.** In case of the death of a pupil of the said institutions, the funeral expenses on such account is made out as above mentioned and in like manner collected.

### **BENEVOLENT INSTITUTIONS—INSANE.**

(Acts 1881, S. p. 546, Sec. 3707.)

**51. Ample supply of clothing.** Every person admitted to the insane asylum is required to have an ample supply of suitable clothing to be sent with them; and it is required that the county furnish same.



(Acts 1852, 1 R. S. p. 322, Sec. 3708.)

**52. Annual outlay of \$20, for clothing.** The amendment of 1907, p. 563, limits the expenditure on this account to \$30. The act of 1852, 1 R. S. p. 322, provided for the annual outlay for clothing for each inmate at \$20, to be paid by the county from which the patient was sent.

(Acts 1852, 1 R. S. p. 322, Sec. 3709.)

**53. County pays funeral expenses.** The county likewise is required to pay the funeral expenses of its patient dying at the hospital for the insane.

#### **BENEVOLENT INSTITUTIONS, FEEBLE-MINDED.**

(Acts 1911, p. 471, Sec. 3523.)

**54. Admissions to, approval of Board.** All applications for admission to the Indiana School for Feeble-Minded Youth at Fort Wayne shall have the approval of the Board.

(Acts 1911, p. 473, Sec. 3524.)

**55. Clerk's duty to procure clothing.** The clerk of the circuit court is required to procure specifically mentioned clothing, limited to cost of \$20, for each person committed, and in case of a female she shall be accompanied by a female attendant, the cost of which is to be paid by the county. The Board in passing approval for application is required to mention full particulars touching the ability of child, or its parents, to pay the expenses of its maintenance.

(Acts 1911, p. 475, Sec. 3522h.)

**56. Transportation expense—Female attendant.** In case that the parents of a child between the ages of 6 and 16 years are wholly unable to bear the expenses of the clothing required by the rules of the trustees of the State School for Feeble-Minded, and the transportation to and from such school, the cost shall be borne by the county, and also the expense of a female attendant when required.

#### **BENEVOLENT INSTITUTIONS, EPILEPTIC.**

(Acts 1905, p. 483, Sec. 3563.)

**57. When county pays for maintenance.** Admission to the Village of Epileptics at Newcastle and the maintenance of a patient, if not paid by himself, relatives or friends, must be paid by the county. All incidental expenses, traveling and costs of examination are likewise paid by the county.

#### **BENEVOLENT INSTITUTIONS, TUBERCULOSIS HOSPITAL.**

(Acts 1907, p. 198, Sec. 3582.)

**58. How admissions made to hospital.** Application for admission of indigent persons for treatment at the Tuberculosis Hospital at Rockville must be made by the resident township trustee, mentioning cer-

tain requirements, a copy of which, as soon thereafter as practical, shall be filed by him with the Board.

The cost of treatment is chargeable to the county, being limited to \$5 per week for each patient, which shall be paid by the Board upon receipt of the sworn statement of the superintendent. It is the duty of the council to make sufficient allowance and appropriation to cover such payments.

### **BENEVOLENT INSTITUTIONS—COUNTY.**

(Acts 1889, p. 215, Sec. 3627.)

**59. When Board may enter into contract.** In counties where there may be established an "orphans' home" or "home for orphans and destitute children", where orphan or destitute children are confined and supported by the county in county infirmaries, or at the expense of the county, the Board may enter into a written agreement with the authorities of such orphans' home giving such children into the care and custody of such home until they shall reach the age of 14 years.

(Acts 1897, p. 44, Sec. 3646.)

**60. Asylums for orphans in counties.** Boards in each county shall have the power to establish and maintain asylums for the support, care, education, control and protection of orphan, dependent, neglected or abandoned children, or enter into contract with an organized association or by mutual agreement enter into contract with Boards of contiguous counties, to unite in the establishment and maintenance of such an association, each county bearing its proportionate share of the expense.

(Acts 1907, p. 90, Sec. 3647i.)

**61. Board's power to provide grounds and buildings.** In any county where an association is organized and duly incorporated, under any law of this State, and the Board finds that such association is organized for the purpose contemplated, the Board may provide by purchase or otherwise suitable grounds and buildings for the use and occupation of such association and its wards, unless such provisions be already made, title to buildings and improvements to remain in said county or counties. Limitation to expenditures is based on total population, to wit: \$5,000 for 20,000 population and \$1,000 for each additional population of 5,000. Costs of lands, in case of purchase, not to exceed one-half of the cost of the improvements. Boards are required to keep premises in repair.

(Acts 1915, p. 643, Sec. 3648 as amended.)

**62. Allowance for support, necessary statement.** Before such association shall receive any compensation, an itemized statement sworn to by the general officers or matron shall be filed with the board, showing name and age of child, whether committed by the Board, or otherwise; that no child is retained under any plan operating to the financial profit of the association, or under any operation which might



profit by reducing quantity or quality of food, care or clothing supplied to such child.

When so filed, the Board shall allow and pay to said association not more than 40 cents a day for each day the association has had custody of such child. The Board shall, in case of death, allow a reasonable sum for the funeral expenses of such child. It is unlawful for the Board to allow a compensation for finding homes for any such children.

(Acts 1913, p. 708, Sec. 3653.)

**63. Duty of Board of Charities to find homes.** The Board of State Charities has authority to appoint agents for the purpose of finding homes for such orphan or other dependent children. The duties of such agents include the inspection of orphan asylums and report of results to the Board. The traveling expenses of any such child taken from place to place by such agent, and its temporary keep, shall be paid by the county in which the child was a public charge, and shall be paid by such county, monthly, upon specific itemized vouchers signed and sworn to by such agent.

(Acts 1901, p. 369, Sec. 3661.)

**64. Board of Children's Guardians.** Under the provisions of the act of March 11, 1901, there is created in each county a Board of Children's Guardians. The members, six in number, three of them being women, are appointed by the circuit court, and they have the care and supervision of neglected and dependent children under 15 years of age, domiciled and resident of the county.

On the approval of the Board of Guardians, the Board of Commissioners may provide and maintain a house of suitable size and convenience for the use of children placed in their custody and control; also may pay agents and assistants, as well as the other expenses incurred for board and maintenance; being limited to 30 cents per day for each child kept and maintained; or may keep such children outside of such house if the best interests of the child demand. The council is required to make the necessary appropriations to carry the law into effect.

(Section 3662.)

**65a. No fees or costs chargeable to Board of Guardians.** No official fees shall be charged against the Board of Children's Guardians for court costs or witness fees, for filing of reports, petitions or other court proceedings, but such costs shall be paid by the county on the order of the circuit court.

(Acts 1901, p. 430, Sec. 3760.)

**65b. Marion County Asylum for Insane.** In counties of 150,000 population (Marion County) by last U. S. census, the council may pass an ordinance for the purchase of and appropriation for the Board, to purchase a tract of land and build thereon an asylum for the incurable insane of the county and to employ some humane and responsible person as superintendent, subject to the restrictions of the Board; also to employ necessary assistants.

Such asylum shall be known as the "Asylum of the Insane of \_\_\_\_\_ County", and shall be maintained as a permanent institution, the council being required to make all necessary appropriations to maintain it.

(Acts 1901, p. 430, Sec. 3762.)

**66. Insane paupers—Duty of superintendent.** The superintendent of such asylum shall receive into his care and custody all incurably insane who have become a county charge as paupers, and take measures for their employment and support and perform other duties required by the Board.

All such charges shall be transferred from the county poor asylum to such home, and all such incurably insane persons shall be committed there instead of to the county poor asylum. All incurable insane paupers committed from such county to the State asylums shall be transferred to such home.

(Section 3764.)

**67. Boards empowered to contract with guardians.** Boards are authorized to contract with the guardian of any incurably insane ward, resident in said county, for the keep of such ward upon an agreed compensation.

All the estate of such ward, after the payment of the expenses of the trust, if he has no family, shall be liable for such agreed compensation; but if such insane ward shall have a family, then all of his estate exceeding in value \$500 shall be liable, and be recovered by the Board.

Upon a satisfactory showing by friends, that they are ready and willing and able to provide for him, such ward may be discharged to them.

(Acts 1875, p. 169, Sec. 4331.)

**68. Asylums for maintenance of colored orphans.** Under an act of February 20, 1867, was authorized the establishment and maintenance of asylums for the care, support, discipline and education of orphan children by voluntary associations. Later, under act of February 25, 1875, authority was given Boards to give aid to such organized associations within the county, and after verification of claim, to allow 25 cents per day for each inmate orphan which would otherwise have been a charge on the county.

(Acts 1875, p. 169, Sec. 4334.)

**69. Duty as to binding out orphans.** Under this act, that member of the Board longest in continuous service as commissioner becomes ex-officio a member of the Board of officers of such voluntary association. It then becomes the duty of such members to bind out any orphan child to some suitable person, when it can be on such terms to secure to the child a proper maintenance and education, and it is further enjoined that they see that the child has proper treatment, and that it shall be agreed by such master or mistress to cause such apprentice to be taught to read and write and the rules of arith-

metic to the double rule of three inclusive, if practicable. See Sec. 8389, Burns R. S.

(Acts 1903, p. 204, Sec. 4332.)

**70. Power of Board Marion County, foundlings** In counties wherein there is a city containing a population of 100,000, (Marion County) as shown by preceding U. S. census, Boards upon sanction of the council shall allow and pay any non-sectarian society or asylum, containing a special ward for care of foundlings and infants, with special trained nurses, the sum of 30 cents per day, for each child, for the keep, care, education and placing in family homes.

(Acts 1903, p. 537, Sec. 4333.)

**71. Allowance to custodial institution.** Boards, in counties which do not maintain a county orphans home, shall provide for the care of a child, mentally and physically defective, with any orphans home, custodial institution or training school in the state other than a state institution. Such keep is limited to 30 cents per day for each child payable by the Board upon proper certificates of the attending physician of such institution. The State Board of Charities has the right to supervise all such allowances.

(Acts 1879, p. 228, Sec. 4335.)

**72. Allowance for keep of colored orphans.** Any association formed for the maintenance for colored orphans, exclusively, is likewise entitled to the same per diem of 30 cents per capita.

(Acts 1891, p. 76, Sec. 4337.)

**73. When Board may purchase orphan asylum.** In counties where there is an organized association purposed for maintaining an orphans home or asylum, the Board may, at its discretion, provide suitable grounds by purchase and erect suitable buildings for use and occupancy of its wards, limited to a cost of \$5,000, the title to the grounds vesting in the county.

Other counties may join in such purpose and each county appropriate \$5,000, the title being in the association, in trust for the counties. In case of sale, proceeds shall be distributed on basis of amount paid by each county. Each county to be represented on Board of officers by that member of each Board having longest continuous service.

**74. Further powers given to Board.** The act further provides that the Board of such counties, coming under the act, containing a population of 25,000 or more inhabitants, at its discretion, may provide by purchase suitable grounds and buildings, or for the erection of building for the purposes herein named, at a cost not exceeding \$10,000. The Board is authorized to keep the property in repair at the proper expense of the county.

(Acts 1881, p. 10, Sec. 4339.)

**75. Who shall be admitted to orphans asylum.** After suitable provision has been made as above provided for, every child under the age

of 13 years who is a charge upon the county and a proper person, under the laws, to be placed in the county asylum shall be received in such orphans home and the Board shall allow a sum not exceeding 25 cents per diem for each child maintained and cared for by such association.

#### BLANKS AND STATIONERY.

(Acts 1875, S. p. 31, Sec. 9621.)

**76. Restriction as to allowance for printed blanks.** Boards are prohibited from paying out any money from the treasury to any county officer for any printed blanks, or for stationery, except for the use of the county.

#### BOARD OF COUNTY COMMISSIONERS.

(Acts 1, R. S. 1852, p. 224, Sec. 5969.)

**77. Organization of the Board.** There is organized in each county of the state a Board of Commissioners for transacting county business to be elected, respectively, at the general elections. Any two of them shall be competent to do business, and whenever there is a vacancy in the office the remaining member or members, together with the auditor shall choose some person to fill such vacancy until the next general election.

**Note:** The courts have decided that it is the intention of the law that the organization of the Board shall be such that one member shall retire each year.

(Acts 1 R. S. 1852, p. 224, Sec. 5970.)

**78. Division of county into districts.** Each county shall be divided into three districts and numbered, one, two and three, which are not subject to alteration oftener than every three years.

(Acts 1885, p. 69, Sec. 5972.)

**79. Commissioner's term of office.** The term of office of commissioner is three years, and the term of office of no two districts of the county shall begin in the same year. The year in which the term of office of each district shall begin shall be determined by calculating period of three years from the end of the term for which the commissioner for the same district was elected upon the organization of the Board of Commissioners for the county.

(Acts 1 R. S. 1852, p. 224, Sec. 5973.)

**80. Oath of office to be endorsed on certificate.** Upon receipt of certificate of his election, as county commissioner, he shall take the usual oath which being certified on back of the certificate, under the hand and seal of the person administering same, shall be a sufficient authority for such commissioner to act.

(Acts 1 R. S. 1852, p. 224, Sec. 5974.)

**81. Board a corporate body, name.** The Board shall be considered a body corporate and politic by the name and style of "THE BOARD OF COMMISSIONERS OF THE COUNTY OF.....";



and as such, and in such name, may prosecute and defend suits, and have all other duties, rights and powers incident to corporations, not inconsistent with the provisions of the law.

(Acts 1909, p. 53.)

**82. Legalization of certain bonds.** By act of the legislature, approved February 26, 1909, certain bonds issued by the county were legalized regardless of irregularities in their issue.

#### BONDS, OFFICIAL.

(Acts 1881 S. p. 240, Sec. 253.)

**83a. Actions on bonds, how brought.** Actions on official bonds, payable to the state, shall be brought in the name of the State of Indiana, upon the relation of the party interested.

(Acts 1897, p. 192, Sec. 5728.)

**83b. Bonds by surety companies.** Under the provisions of the act approved March 6, 1897, any bond required, by any law of the state, to be made and filed with the Board, may be executed by a company qualified to act as such surety.

**Note:** The State Board of Accounts holds that the Board of Commissioners is prohibited from the payment of any premium on a surety company bond for any public officer.

(Acts 1 R. S. 1852, p. 166, Sec. 9100, 9101, 9103.)

**84. Oath of office.** Every officer and every deputy, before entering on his official duties, shall take an oath to support the constitution of the United States and of this state, and that he will faithfully discharge the duties of said office. Such oath, except that of members of the general assembly, the governor and lieutenant governor, shall be indorsed on the commission or certificate and be signed by him, and certified to by the officer before whom it was taken, who shall also deliver to such person a certified copy of the same.

The oath of the commissioners shall be filed with the clerk of the circuit court. The oath of all persons appointed by the Board shall be filed with the county auditor.

#### BONDS, APPROVAL OF.

(Acts 1 R. S. 1852, p. 166, Sec. 9109.)

**85. Approval of bond to be endorsed.** The approval of every official bond shall be written thereon by the approver thereof; and no bond shall be filed until lawfully approved.

(Section 9111.)

**86. Bonds, to whom made payable.** All official bonds shall be made payable to the State of Indiana.

**BONDS, APPROVAL OF COUNTY OFFICERS.**

(Acts 1852 S. p. 90, Sec. 9119.)

**87. Board approves county officers' bonds.** It shall devolve upon the Board, or a majority of its members to approve the official bonds of sheriffs, coroners, county recorders and clerks of the circuit court, and the Board is required to meet at the auditors office, without a precept, to approve the securities thereto if sufficient; and their approval shall be signed thereon.

(Burns R. S. Secs. 9457, 10275 and 6376.)

**88. Board approves bond of auditor.** The Board shall also approve the bond of the county auditor.

The duty of approval of the bond of county assessor devolves on the county auditor, as well as that of county superintendent.

**BONDS, BOARD TO EXAMINE.**

(Acts 1873, p. 46, Sec. 9135.)

**89. Board's duty to examine all official bonds.** The Board shall examine all official bonds filed in the office of the clerk of the circuit court, likewise the bond of that officer, which under the Act 1 R. S. 1852, p. 166, shall be filed with the county recorder; and also the bonds filed in the office of the county auditor. When it is found that the penalty of the bond is inadequate or the securities are insufficient, the Board shall direct the clerk to cause the necessary proceedings to be had to procure a new bond or additional securities. In the case of the clerk's bond, such action to be taken by the auditor.

The Board on its own motion may make the investigation at any time, or on the petition of any taxpayer.

**Note:** For approval of treasurer's bond, see Sec. 9474, Sec. 512 this book.

(Acts 1875, p. 37, Sec. 9412.)

**90. Board fixes amount of bonds.** The Board shall determine the amount of bond to be given by the clerk of the circuit court, which shall be filled by him in the penal sum fixed by the Board, to be approved by the Board.

Failure to give such bond on or before the second day of succeeding term of the Board, the office shall be declared vacant, and the same be filled as provided by law.

**BOUNTIES.**

(Acts 1875, p. 178, Sec. 6032.)

**91. Bounty for fox and wolf scalps.** Boards may cause to be paid out of the county treasury a sum not exceeding \$20 to any person exhibiting a wolf scalp, and \$5 for exhibiting a fox scalp, with affidavit that such animal was killed in the county and no reward had been paid from the county treasury. For scalps of a wolf or fox under six months old, bounty shall not exceed \$3 and \$1.50, respectively.



In all cases where these bounties are paid, the several acts require that the killing or capture occur within such county, which is to be supported by affidavits.

(Acts 1883, p. 190, Sec. 6033.)

**92. Bounty for owls and hawks.** Boards may cause to be paid out of the county treasury, a sum not over \$2 to any person who shall exhibit to the auditor a wood-chuck scalp, or the head of any owl or hawk, with affidavit that such wood-chuck, owl or hawk was killed in the county, and that no reward had been paid to him from the county treasury. Sparrow-hawks and screech owls are barred from such bounty.

(Acts 1 R. S. 1852, p. 458, Sec. 6037.)

**93. Bounty for silk, reeled and cocoons.** The Board, at its option, may allow bounty on silk raised in the county, to wit: for every pound of cocoons 15 cents; per pound of reeled silk, 25 cents. The claimant is required to present such cocoons or reeled silk, and establish to satisfaction that the cocoons were raised and the silk reeled in the county and that such reeled silk was from cocoons raised in the state, and further that no reward had been made on the product.

(Acts 1911, p. 332, Sec. 6033a.)

**94. Bounty for crow's heads and eggs.** Councils and Boards may appropriate and cause to be paid from the county treasury a sum not exceeding 10 cents to any person who may deliver to the county auditor the head of any common crow, and the further sum of 5 cents for each and every crow's egg, exhibited in lots of ten, with affidavit that such heads were from crows killed and eggs taken from nests in the county. Provided further that the act does not apply to hawks and owls.

#### BRIBERY.

(Acts 1905, p. 584, Sec. 2378.)

**95. Penalty for Bribery.** Whoever corruptly gives, promises or offers to any officer, either before or after his election, any money or valuable thing, to influence his action in any pending legal matter; and whoever being an officer accepts or solicits any money, premium or offering to influence such action, shall on conviction be imprisoned in the state prison from two to fourteen years, and fined not to exceed \$10,000, and disfranchised and rendered incapable of holding office for a determinate period.

(Acts 1905, p. 584, Sec. 2425.)

**96. Penalty for corrupt proceedings.** Any person paying or agreeing to pay any money or deliver anything of value to any county commissioner for the purpose of procuring any contract for the construction of any public work or building or the performance of any work, furnishing material for use of the county, or who having any such contract shall pay or agree to pay any county commissioner, having jurisdiction, any money, percentage, drawback, reward, percentage or profit

thereon shall be fined \$300 to \$5,000, imprisoned 2 to 14 years, disfranchised, and deprived from holding an office for a determinate period.

(Acts 1881 S. p. 174, Sec. 2585.)

**97. Penalty for bribery in election.** Whoever gives or offers a bribe, threat or reward to procure his election to any office under the constitution or laws of this state, shall be fined not over \$1,000, nor less than \$50; imprisoned in the state prison one to five years, and such person so offending, if elected to such office, shall be disqualified from holding office during the term for which he may have been elected, and also be disfranchised for a determinate period.

### BRIDGES, ON COUNTY LINES.

(Acts 1903, p. 19, Sec. 3777.)

**98a. County line bridges, erection, repair, purchase.** Whenever public convenience requires the erection, repair or purchase of any bridge across any stream forming the boundary line between two or more counties in this state, upon application therefor to the Board of either of such counties such Board, if thought expedient, may declare its willingness to aid in the erection, repair or purchase, by resolution or order, and shall cause notice to be given to the other interested counties. When it has been ascertained that all the Boards have made such order, such Boards shall by a concurrent resolution cause a survey and estimate to be made, submitting plans and specifications by some competent person, at some specified time, and place, at or near the site of such contemplated bridge, when such Boards shall meet in joint session to determine the kind of improvement to be made, and there adopt plans and specifications therefor to be filed with auditor of the first proposing county.

(Section 3777.)

**98b. When other county does not respond.** In the case that a Board which has had notice of the proposed improvement does not respond within 30 days, the proposing county has power to proceed with such building or repairing such bridge according to the law governing such work wholly within one county, after having first obtained the consent of the landowner, whose land on opposite side will be occupied by such bridge, to the building of the same.

(Section 3778.)

**98c. Duties to appoint superintendent.** The Boards, while in joint session shall appoint one or more superintendents, who shall have full control and supervision of the erection or repair of said bridge, subject, however, to such regulations as such Boards may adopt.

Such superintendent is required to give bond in such sum required by the Boards and to their approval.

(Section 3779.)

**98d. Payment enforced for building bridge.** When in joint session the Boards shall make such appropriation for their respective coun-

ties as will make an equitable proportion to each county for the whole cost of construction, repair or purchase of such bridge, and by concurrent order or resolution fix what proportion of such total expenditure shall be paid by each county interested. When the requirements in the first section of this act have been complied with and the proportion of cost to each county has been agreed to, and one of the counties which will be affected by such improvement refuses to join therein, the county desiring such improvement may proceed as provided in the first section, and when such cost does not exceed \$3,500, the acting county is entitled to recover from such adjoining county as other claims against counties are collected and when claim is litigated, the judgment shall include a reasonable attorney's fee.

(Section 3780.)

**98e. Joint proceedings same as in one county.** All Boards proceeding under this act to erect, repair or purchase joint bridges shall be governed by the laws now in force for the erection of bridges wholly in one county, in the matter of advertisements for bids, letting of contracts, non-collusion affidavits and bonds of bidders.

(Section 3781.)

**98f. Ownership of joint county bridge.** Each county shall be regarded as the owner of an interest in any such joint bridge erected, repaired or purchased in pursuance of this act, and each shall have a voice in regulating the use of it.

#### BRIDGES, TOWNSHIP—COUNTY LINES.

(Acts 1885, p. 58, Sec. 3782.)

**99a. Preliminary proceedings for erection.** Whenever a petition shall be presented to the Board signed by 25 freeholders of any township of any county, which township is bounded on any side thereof by a stream, which stream forms the boundary line between two counties of this state, asking such township to make an appropriation of money to construct, or aid therein, or repair of a free public bridge used for highway purposes only, across such stream, to an amount and upon such terms and conditions as may be specified in the petition, not exceeding, however, two per centum upon the amount of taxables of such township on the tax duplicate for the preceding year, and when the purpose is to give aid in construction or repair, specifying further the fund the same is to be in aid of, and the point as near as practicable on such stream such bridge is, or is to be, located, the Board being satisfied that petition is properly signed, shall cause the same to be entered at full length upon its record.

(Section 3783.)

**99b. Election to be ordered.** The Board shall take such petition under advisement, and thereupon order an election to be held in such township on a specific date not more than 60 nor less than 30 days thereafter, to vote upon the subject of the proposed appropriation.

(Section 3784.)

**99c. Auditor's duties concerning bridge election.** Notice of such election shall be given by the auditor by publication for four successive weeks in some newspaper of general circulation in the county and by the posting of hand-bills in 15 public places in the said township three weeks prior to date of the said election. The auditor and sheriff shall certify to their respective acts herein, which when recorded on the record of the Board, shall be sufficient evidence of such facts.

(Acts 1885, p. 58, Sec. 3793.)

**99d. To pass must have 60 per cent. majority votes—Tax levy.** The act requires a majority of 60 per cent. of the votes cast in favor of the appropriation, and when so carried the Board at its June session shall levy a special tax for at least one-half of the amount specified in the petition; the residue being taken care of at the June session of the following year.

**Note:** The county council now levies all taxes. See Sec. 5949 Burns' R. S.

(Acts 1885, p. 58, Sec. 3794.)

**99e. Election expenses, how paid.** The expenses of such township election are to be advanced by the county and are to be repaid from the first moneys collected by such taxation, in the event that the vote has been favorable to the appropriation.

(Acts 1885, p. 58, Sec. 3796.)

**99f. When Board may give aid.** Whenever any township shall have voted to construct, or to aid in constructing such bridge, and the tax in pursuance of said vote has been levied, the Board may if it thinks public convenience requires the same, let a contract for such construction or repairs of the bridge, under the same rules as for letting a bridge wholly in one county. And if the amount so voted and levied is not sufficient to construct or repair such bridge, the Board may add thereto out of any funds in the treasury unappropriated, an amount sufficient to construct or repair said bridge, or may levy a tax on the county to make up such deficiency.

(Acts 1885, p. 58, Sec. 3797.)

**99g. Board to withhold tax levy until bridge is let.** No tax, under this appropriation, shall be collected or paid until after the Board has made a contract for the building, or repairing of such bridge; and in no case shall the tax be returned as delinquent until after such letting, but shall be continued on the tax duplicate. When the letting has been made the Board shall notify the treasurer who then shall proceed to collect such tax.

(Acts 1885, p. 58, Sec. 3798.)

**99h. Board may advance money to erect.** Whenever the Board shall let a contract to construct or repair a bridge under the provisions of this act, it may pay for the same out of any money in the treasury



not otherwise appropriated, and when such levied tax in said township, as in the act provided, is collected, the Board shall reimburse the county out of said tax.

(Acts 1899, p. 63, Sec. 3799.)

**99i. Duties of auditor.** Under a supplemental act approved March 1, 1899, if the appropriation voted by such township is to aid another township in the State on the opposite side of the stream, it becomes the duty of the auditor when the returns of such election shall be filed with him, to notify the auditor of the county in which such opposite township is situate, of the result of such election, and of the amount of such appropriation. When such tax shall have been levied as provided in the act, each auditor shall notify the other of the fact, and bring to the attention of his Board, when the Boards shall immediately appropriate from its county, from the general fund, an amount equal to the tax voted by the township therein.

(Acts 1899, p. 63, Sec. 3800.)

**99j. Which county controls lettings.** This supplemental act further provides that the Board of the county, in which its township voted the greater appropriation, shall control, and shall let the contract for the construction or repair of such bridge, under the same rules provided by law for bridges constructed wholly in one county.

The fund appropriated by the other township shall be remitted to the treasurer of the other county whose Board has let the contract, to be used as may be required, prorating such appropriations to complete the work.

### BRIDGES, ON TOWNSHIP LINES.

(Acts 1895, p. 195, Sec. 3801.)

**100a. Preliminary proceedings before Board.** Whenever a petition shall be presented to the Board signed by 25 freeholders of any township of such county, which township is bounded on any side by a stream of water, which forms the boundary line between two townships, whether situated in the same or different counties, asking to make an appropriation of money to aid another named township in furnishing payment of one-half the cost of constructing a public bridge, or two or more of such bridges, to a stated amount not exceeding, however, the two-thirds of one per centum of taxable property of such township on the tax duplicate of the preceding year, specifying points of location of such bridges, the Board being satisfied that the petition is properly signed, shall order its record at full length.

(Acts 1895, p. 195, Sec. 3802.)

**100b. When Board shall order election.** The Board shall thereupon order an election in such township, at the several voting places, or may consolidate the precincts into one, which is named in case there are more than one, to be held not less than 30 nor more than 60 days thereafter, to be taken upon the subject of appropriating

money of aiding in the construction of the bridge or bridges as prayed for in such petition.

At the same time the Board shall appoint inspectors for such election.

(Acts 1895, p. 195, Sec. 3804.)

**100c. Duties of auditor.** Notice of such election shall be given by the auditor by publication for four successive weeks in some newspaper of general circulation in the county, and by the posting of hand bills in 15 public places in said township, three weeks prior to said election.

The auditor and sheriff shall certify to their respective acts herein which when recorded on the record of the Board shall be sufficient evidence of such facts.

(Acts 1895, p. 195, Sec. 3811.)

**100d. Returns of election filed with auditor.** Statement of the vote at such election shall be filed with the auditor who shall record the same at full length in Board's record and shall file and preserve all certificates, poll books and tally sheets.

(Acts 1895, p. 195, Sec. 3812.)

**100e. Levy of tax by Board—Limitation.** If a majority of the votes cast shall be in favor of said appropriation in each township voting, if both be in the same county, the Board at its next regular session shall make an order to be entered at full length on its record, granting the prayer of the petition and shall levy a special tax upon the real and personal property of said townships but not exceeding one-third of one per centum of such valuation, to be collected the same as other taxes, and the residue of such tax to be levied the following year, at the time for levying county and state taxes.

Provided, That no part of said tax shall be levied unless both townships, the one on either side of the stream, vote in favor of said appropriation.

(Acts 1895, p. 195, Sec. 3813.)

**100f. When township bridge is on county line.** Where the stream is a county boundary line, and separates the two voting townships, and when the returns of such election is favorable to the proposition and is filed with the auditor, he shall by writing certify to the auditor of the other county the result of vote polled and the amount of the appropriation made by the township. The receiving auditor shall record at full length on the record of his Board, same as mentioned before. The Board of each of said counties, at their next regular session shall make an order to be recorded at full length and shall respectively levy a special tax of at least one-half of the tax voted and the other half of the said tax the following year.

(Acts 1895, p. 195, Sec. 3814.)

**100g. Powers of Board when on county line.** Boards have the power to make an appropriation out of any unappropriated money in

the county treasury to pay for the construction of such bridge or bridges, and if there be no moneys in the county treasury for that purpose, the Board can make provision therefor. And when the taxes voted by the townships, as herein provided shall be levied and collected, said county shall be reimbursed for one-half the amount that said bridge or bridges cost.

When in different counties, the respective counties shall make appropriations out of any moneys in their treasuries, not otherwise appropriated and to pay such county's proportionate part of that half of the cost not voted by the townships.

Said half not voted by the townships shall be apportioned between the counties in proportion to the aggregate taxable property of the respective counties, as the same appears on the tax duplicate for the preceding year.

In case in either of the treasuries there be no available moneys, the Board of such county shall make provision to pay the amount voted by its township and to pay its proportionate part of the half to be furnished by the two counties, as provided. To the extent the proper county may furnish the funds to pay what its township has voted, said county shall be reimbursed when the taxes voted by such township are levied and collected.

(Acts 1895, p. 195, Sec. 3815.)

**100h. Plans, specifications, estimate.** When the first installment of taxes voted by the townships has been levied, the Boards of the two counties shall, by concurrent resolution, cause a survey and estimate to be made and require plans and specifications to be submitted therewith by some competent person to the respective Boards at some specified time and place at or near the sites of contemplated bridges, when such Boards shall meet in joint session, to estimate and determine the kind of bridges that shall be erected, the manner and time of payment of same.

Provided, That whenever the Board so notified shall refuse to join, then the Board giving the notice may build such bridge or bridges under the same rules and regulations for building a bridge wholly within one county, and have a claim against such delinquent county. Such claim to be collected as other claims are enforced, and interest, and shall also include a reasonable attorney fee.

(Acts 1895, p. 195, Sec. 3816.)

**100i. Procedure when Boards cannot agree.** In case that the Boards of the counties cannot agree in relation to the matters herein, then the Board of that county whose appropriations herein provided for, including that voted by the township in such county is the largest, shall take jurisdiction and proceed to build the bridge or bridges under the rules and regulations in force for building bridges wholly within the county.

In such case, said county shall have a claim against the other county for payment, for the amount such delinquent county and township should furnish.

(Acts 1895, p. 195, Sec. 3817.)

**100j. Joint Board appoints superintendents.** While the Boards of the two counties are in such joint session, they shall appoint one or more persons as superintendents, who shall have full control and supervision of such bridge, subject, however, to regulations determined upon by the Board.

(Acts 1895, p. 195, Sec. 3818.)

**100k. Ownership of joint bridge—Repairs of.** It becomes the duty of the Boards, in joint session to make appropriations for their respective parts in the proportions indicated in the act.

When such bridge has been completed, the ownership obtains to the townships and counties in proportion to such appropriations. Repairs thereafter to be paid by the townships one-half in proportion to their respective proportions and the counties one-half in like proportions.

#### BRIDGES, COUNTY.

(Acts 1857, p. 20, Sec. 3821.)

**101a. Board to cause survey and estimate.** Whenever in the opinion of the Board the public convenience shall require that a bridge should be repaired or built over any water course, they shall cause a survey and estimate to be made therefor, and direct the same to be erected.

(Section 3822.)

**101b. When Board may aid, or construct.** If the estimate therefor shall exceed the ability of the road district in which such bridge is to be built by the application of its ordinary road work and tax, to perform, the Board (through the county council) may make an appropriation from the county treasury to build or repair the same, provided the bridge, to be erected or repaired, does not cost to exceed \$100. (See Acts 1913, p. 609; Burns R. S. 3823a, Sec. 111 this book.)

(Acts 1857, p. 20, Sec. 3823.)

**102. Board may accept donations.** Board shall receive and appropriate all donations for the erection and repair of bridges; and they shall also aid the same when of general importance by advances from the county treasury and shall regulate payments and the kind of bridges to be erected.

The matter of aid by the Board is left to its discretion.

(Acts 1855, p. 18, Sec. 3827.)

**103. When Board may charge toll.** The Board may charge toll on any bridge erected in said county to pay the cost of erecting the same, but in no case shall such tolls be continued after the sum expended in such bridge shall have been derived from such toll.

(Acts 1881, p. 5, Sec. 4405.)

**104. Public aid to bridge on state line.** Public aid may be given by counties or any townships in the construction of any bridge over



any river or stream forming the boundary of the state, either by a donation or in taking stock in same under the provisions of act approved March 5, 1881.

(Acts 1855, p. 18, Sec. 3828.)

**105. Board to keep county bridges in repair.** The Board of Commissioners of such county shall cause all bridges therein to be kept in repair, and shall cause the township superintendent of the proper road-district to keep in a conspicuous place, at each end of any bridge in his district whose chord is not less than twenty-five feet, the following notice in large English character: "ONE DOLLAR FINE FOR RIDING OR DRIVING ON THIS BRIDGE FASTER THAN A WALK." And if any person shall ride or drive over any such bridge faster than a walk, for any such offense he shall forfeit and pay one dollar, to be recovered by the proper township superintendent before any justice of the peace of the proper county; which shall be applied to the repairs of such bridge.

**Note:** See Sec. 108, this book, for supplementary act.

(Acts 1855, p. 74, Sec. 3829.)

**106. When Board erects bridge within city or town.** All bridges, the estimated costs of which shall exceed \$500, to be built within the corporate limits of any city or town shall be built by the Board in the same manner and paid for out of the same funds that other bridges without such corporate limits of such town or city are by law built and paid for.

**Note:** Cities or towns cannot mandate the Board to build such bridges. This section does not take from cities the power to build or repair such bridges. Burns R. S., Sec. 7692; Board v. State, 141 Ind. 187; City of New Albany v. Iron & C. Co., 141 Ind. 500.

(Acts 1855, p. 18, Sec. 3831.)

**107. When bridge is abandoned by company.** Whenever a bridge company abandons any bridge, or when its right to take toll has expired, by limitation of its charter, the Board may require the same, and the grades thereto, to be repaired, and for that purpose the Board shall possess all the powers for building or repairing bridges. The Board may cause toll to be charged on such bridge, as in other cases, or may at its discretion authorize the bridge company, whose charter has expired to repair the bridge or grade and take such tolls as the Board may fix for that purpose.

(Acts 1905, p. 521, Sec. 7691.)

**108. Supplementary act as to bridge repairs.** It is the duty of the Board to cause all bridges in the county to be kept in repair. The Board shall cause the proper road supervisor to keep in a conspicuous place on each end of a bridge, having a chord of 25 feet, or over, warning signs, a notice in large letters: "ONE DOLLAR FINE FOR RIDING OR DRIVING ON THIS BRIDGE FASTER THAN

A WALK." Any person violating this injunction, or whoever may wilfully injure such bridge, for each offense he shall forfeit and pay any sum not less than \$1.00 nor more than treble the damages legally ascertained, to be collected by suit of the supervisor before any justice of the peace in such county.

**Note:** The first sentence above must be construed in connection with Sec. 3823a Burns R. S.; also with Secs. 105, 106 and 111, this book.

(Acts 1905, p. 521, Sec. 7692.)

**109. Duty of Board, when bridge within corporation.** Boards may build or repair a bridge within the corporate limits of a town or city, in and after the same manner as without a corporate city.

**Note:** This section does not take from cities and towns their power to build or repair bridges within their corporate limits; nor does this section relieve cities and towns of their duty to see that bridges within their corporate limits are kept in repair. See note under Sec. 106, this book.

(Acts 1913, p. 162, Sec. 7693.)

**110. Full proceedings, in joint county bridge.** When public convenience requires the erection, repair or purchase of any bridge across a stream forming the boundary line between two or more counties, requiring a span of more than 20 feet in length, upon application, the Board of either county may declare its willingness to aid therein, and cause notice to be given to the other county. When it is ascertained that the Board of such other county has made a like order, through the certificate of its auditor, such Boards, in the case of the erection, repair or purchase of such bridge, by concurrent resolution shall cause a survey and estimate to be made submitting plans and specifications by some competent person to be presented to the Boards at a specified time and place, at a joint meeting of the Boards at or near the site of such bridge. At such time estimates, the determination of kind of bridge, or of repairs, shall be made, and the manner and time of payment therefor.

Such plans shall be filed in office of auditor of the first county and a complete record made of all proceedings relating to such bridge.

In the event that after the notice to the Board of the second county has been given it shall, within 30 days, refuse or fail to accept or act on same by joining in the proposition, the Boards passing such order, if deemed that public convenience requires it, may build, repair or purchase such bridge under the same rules and regulations as may be in force for such action for bridges wholly within one county, after having first obtained, in case of erection of a bridge, the written consent of the landowner in the adjoining county, whose land will be occupied by any part of such bridge.

In case of the erection or repair of a bridge, the Boards while in joint session shall appoint one or more persons as superintendents who shall have full control and supervision of the erection or repair of such bridge. Such superintendents shall give approved bonds in sums as required by the Boards.

The Boards, in joint session, shall fix the appropriations which shall be made by the different counties, which shall be proportioned to the total taxables of such counties.

In case of the refusal of any county, as has been mentioned, to join in the proposition, the county desiring may construct or repair, and when the cost does not exceed \$10,000 the county making such improvement shall be entitled to recover from the other counties affected by such improvement the amount that such county should have paid, had it joined in the improvement, such claim to be enforced as other claims against counties are enforced, and if litigated to include a reasonable attorney fee in the judgment. The laws relative to advertisements for bids, letting of contracts, affidavits, and bonds shall obtain. Each county shall be regarded as part owner, and shall have a voice in regulating the use of the bridge.

(Acts 1913, p. 609, Sec. 3823a.)

**111. When townships shall erect—\$100 limit.** All bridges hereafter erected or repaired on public highways, when such cost shall not exceed \$100 shall be built by the township trustee and paid for out of the township road fund.

**Note:** This act refers only to highways under the control of township trustees. The bridge is a part of the highway, and the approach to the bridge is a part of the bridge.

#### **BRIDGES AND CULVERTS.**

(Acts 1913, p. 869, Sec. 7774.)

**112. Bridges and culverts—location and repairs.** If the township trustee of the township where any proposed bridge or culvert is to be located or repaired shall notify the Board of Commissioners of his county of the necessity of such location or repair, and if in the opinion the commissioners the public convenience shall require the building or repairing thereof, they shall cause surveys and estimates to be made and provide for the erection of the same: Provided, That if the Board of Commissioners shall not deem such bridge or culvert of sufficient importance to justify an appropriation from the county treasury for the building or repair thereof, the trustee of the townships in which is located such bridge or culvert may appropriate any part of the road fund in the township treasury for that purpose, if he shall deem it right and expedient to do so.

#### **BRIDGE COMPANIES—CORPORATIONS.**

(Acts 1859, p. 45, Sec. 4370.)

**113. How companies are organized.** Any number of persons may form themselves into a corporation for the purpose of constructing and owning a bridge across any river, creek or other water course, by complying with the laws regulating the incorporation of companies. When amount is subscribed sufficient to complete such bridge, such company shall first obtain the consent of the Board for authority to

erect such bridge. If the proposed bridge crosses a stream dividing two counties, the company shall obtain the consent of the Boards of both counties.

#### **BURIAL—EX-SOLDIERS AND SAILORS.**

(Acts 1915, p. 12.)

**113a. Soldiers and Sailors—Allowance for burial.** Whenever any honorably discharged soldier, sailor or marine, who may have at any time served as a regular or volunteer soldier, sailor or marine in the army or navy of the United States, or the wife, or widow of any such soldier, sailor or marine, resident of any county of this state, other than the inmates of the Indiana state soldiers' home or the National military home in Grant county, shall die, upon claim filed by any interested person with the Board of Commissioners of the county, stating the fact of such service, death and discharge, and that the body has been buried in a decent and respectable manner in a cemetery or burial ground in this state, such Board of Commissioners shall investigate, hear and determine such claim like other claims, filed for allowance by them, and if, the facts averred are found to be true, such Board shall consider, also, the tribute of respect due to such soldier, sailor or marine and make allowance of such claim in a sum not exceeding fifty dollars (\$50.00) for service rendered and material furnished in care of such body and such burial: And be it further Provided, That in case of such death and burial, it is averred in such claim and proven that from actual necessity a burial place not to exceed the sum of twenty-five dollars (\$25.00) for the body of such soldier, sailor or marine, or the body of the wife, or widow of such soldier, sailor or marine was purchased in the most accessible cemetery, such Board shall make further reasonable allowances in payment for such burial place, and such allowance in either or both cases shall be paid from the funds of such county, as now provided by law.

All laws and parts of laws in conflict herewith are hereby repealed.

**Note:** It is believed that the act of 1915 repeals sections 9774 and 9775 Burns R. S., sections 125 and 126 this book, and that the trustee is now relieved of the duty of burying soldiers and sailors except as far as such duties may be enjoined by the poor laws.—The Editor.

#### **CANALS.**

(Acts 1859, p. 52, Sec. 4409.)

**114. Procuring consent of Board.** A corporation formed under the provisions of the Act of 1859, p. 52, for the purpose of constructing, owning and operating a canal, thereafter to be built, before proceeding with such construction must first obtain, and have of record, the consent of the Board of the county in which said new canal is to be made and constructed.

(Acts 1873, p. 49, Sec. 6035.)

**115. Public aid by county, when.** In any county where there passes a canal in use for navigation, public aid may be given by the Board to put and keep in repair.



This is limited to an annual payment of \$10,000, which by the act is required to be expended within the county.

The payment is made to the agent or superintendent of such canal upon filing vouchers showing that the outlay for work, labor and material, has been made for the amount of money demanded.

### CEMETERIES.

(Acts 1879, p. 84, Sec. 4433.)

**116. Procedure for incorporation of cemetery.** Boards have the power to incorporate cemetery associations upon the petition of a majority of the lot owners, being resident of the county, proof by affidavit being made; such petition to contain the particular description, the name of such cemetery, when and where a plat is recorded; that 20 days' notice of the filing of such petition prior to the meeting of the Board, and that the posting in five public places in the township was made.

When satisfied that the requirements have been made, the Board shall grant the prayer, fix the number of directors at not less than three nor more than nine, and shall fix the time, place and manner of choosing directors by election, providing for at least 20 days' notice thereof.

(Acts 1881 S. p. 105, Sec. 4439.)

**117. How heads of families may organize.** Whenever the heads of families, resident of the county, whose dead are buried in any cemetery, the title of which is vested in the Board, become organized as a corporation for the burial of the dead and the maintenance of a cemetery, after three weeks' newspaper publication praying for the conveyance of such cemetery, the filing of a bond to keep same in good order, the Board being satisfied as to the propriety of granting such request and sufficiency of the surety, may convey the land occupied by such cemetery to such association.

(Acts 1903, p. 216, Sec. 4448.)

**118. Highways prohibited through cemeteries.** The acts of 1903 at page 216 make it unlawful for the Board to authorize the location or construction of any public highway on any real estate held, used or occupied as a cemetery or burial ground, or to encroach in any wise on same.

(Acts 1895, p. 16, Sec. 4449.)

**119. Restriction of highway in cemetery (Indianapolis).** Boards, or municipal authorities are prohibited from locating any street, alley or other highway in any county having a city of 100,000 (Indianapolis) or more inhabitants within its boundaries, through the lands dedicated as a cemetery.

The act excepts grounds which have been abandoned as a cemetery, or in which burials are no longer permitted.

(Acts 1 R. S. 1852, p. 458, Sec. 4994.)

**120. When lands deeded to Board in trust.** Lands which have been conveyed to the Board, by deed duly recorded, for the purpose of a

public or private cemetery, shall be held by such Board in trust for such purpose.

**Note:** This section is no doubt modified by Section 4439 Burns R. S. 1914, enacted in 1881, and must be construed in connection with Section 4439; see Sec. 117, this book.

(Acts 1905, p. 383, Sec. 8950.)

**121. How Board may convey cemetery.** It is lawful for the Board, at any regular session, to convey to any city or town any public cemetery in the vicinity of, or within the corporate limits of such city or town, upon the application of the Board of Public Works, the common council or the Board of Trustees. Newspaper publication of two weeks and posting in three public places in such town or city of pendency of application being required preliminary to such conveyance.

**122. Duty of township trustee.**

**Note:** Reference might here be had to the act of 1913, at page 290, which provides for the care of abandoned cemeteries by the township trustees; also to the act of 1911, at page 153, which provides that where a cemetery under the control or ownership of a church or religious society has been abandoned for 20 years or more, it is lawful to remove and re-inter all bodies with gravestones and markers.

(Acts 1909, p. 160, Sec. 4440b.)

**123. Combining of contiguous cemeteries.** Whenever the Board of directors of two or more contiguous cemeteries shall desire to unite them under one control, by resolution, the secretary of each corporation, shall make certified transcripts of such resolutions, which shall be filed by their presidents, with the county Board, with the name desired for the new cemetery when combined.

Twenty days' notice by publication in weekly newspaper of the county of the pendency of the application is required.

The Board finding that the petition and publication are perfect shall order such contiguous cemeteries combined under such new name whereupon the directors are authorized to complete its organization.

### CEMETERY ENDOWMENTS.

(Acts 1915, p. 581.)

**123a. Cemeteries—Trust fund.** The County Commissioners of any county in this state shall be required and authorized to receive from any person or persons a deposit or legacy of money to be held in trust in perpetuity or for such period as the donor or testator shall designate in writing, the interest of which shall be used for the purpose of keeping in good condition any abandoned cemetery or any public or incorporated cemetery, or any lot or lots, monuments, mausoleums, vaults or other burial structures in any cemetery of the state. The County Commissioners shall not be authorized or required to expend for such purpose any more than the interest accruing from such funds. No such trust shall be accepted by the county commissioners, the initial amount of which shall be less than one hundred dollars (\$100.00).



All such moneys so received by the county commissioners shall be loaned by the county auditor in like manner as the common school fund is loaned and at the same rate of interest. The loans shall be made in the name of the trust to which it belongs; but the county auditor may combine the money belonging to two or more trusts into one loan, by taking a separate note for each fund, all secured by one mortgage. The appraisers shall be the same used by the auditor to make the school fund loan.

**123b. Loaning trust funds.** The following fees shall be charged in case of mortgage for loans: To each appraiser, fifty cents; for recording mortgage, one dollar; for drawing mortgage, one dollar; for making borrower's affidavit, ten cents; for clerk's certificate, fifty cents; examining title by county attorney, two dollars; all of which fees shall be paid by the borrower.

### CERTIFICATES OF ELECTION.

(Acts 1 R. S. 1852, p. 223, Sec. 9138.)

**124. Which officers get certificates.** All county officers elected by the people who are not commissioned by the governor, shall receive certificates of their election from the clerk of the circuit court of such county.

### CHARITIES.

(Acts 1909, p. 233, Sec. 3678.)

**125. Board of county charities.** Under the provisions the act approved February 17, 1899, upon the petition of 15 reputable citizens the circuit court shall appoint six persons, not more than three of whom shall be of the same political party or belief and not more than four of them to be men, who shall constitute the board of county charities and corrections.

Their duties embrace the inspection of the county poor asylum, county jail, the home for orphans, if such exists, such lock-up and all other charitable or correctional public institutions as exist in the county. Reports in writing of such inspections and their recommendations shall be made quarterly to the Board of Commissioners by first Monday in March, June, September and December of each year.

The council shall appropriate, and the Board allow not to exceed \$50, each year, for the actual expenses of such board of county charities and corrections, including the expense of a delegate to the state conference.

(Acts 1859, p. 34, Sec. 6014.)

**126. Board to contract for medical aid, when.** It is specially made the duty of the Board to contract with one or more skillful physicians, having a knowledge of surgery, to attend upon all jail prisoners or paupers in the county asylum, and may also contract with a physician to attend upon the poor generally in the county.

No claim of a physician or surgeon for such services, shall be allowed by the Board unless in pursuance of such contract.

This section shall not be so construed to prevent township trustees, in townships where physicians are not provided for, from the employment of medical and surgical services, as paupers therein may require. The courts have decided that this contemplates the establishment of a county and not a township system.

**Note:** This section is modified by a later statute, Sec. 5950 Burns R. S., Sec. 523 this book, enacted in 1899, and must be construed in connection with Sec. 5950.

(Acts 1857, p. 18, Sec. 6039.)

**127. Duty of Board—Separation of infirm man or wife.** The Board may, in its discretion, order the county treasurer to pay such sums of money as the Board may deem proper, for the support of resident infirm persons, direct to such infirm persons, or to persons having them in charge, in order that such infirm persons may not be separated from their husbands or wives, by being placed in the county asylum, upon satisfactory proof that such infirm persons have husbands or wives; are unable to support themselves because of blindness or some casualty; and are objects of public charity.

(Acts 1873, p. 106, Sec. 6040.)

**128. When may give aid to cripples.** When a cripple, resident of the county, unable to pay expenses of boarding and lodging at any institute for cripples, and can procure certificate of a reputable physician or surgeon that by proper appliances and surgical aid, there is a reasonable prospect of benefiting such cripple, and can prove his inability to pay such board and lodging, the Board, being satisfied, may provide such expenses from the county treasury together with costs of transportation, but in no instance to pay for surgical or medical treatment.

**Note:** This section must be construed in connection with Sec. 5950, enacted in 1899, Sec. 523, this book.

(Acts 1889, p. 87, Sec. 6041.)

**129. When may appropriate for home indigent old women.** In all cases where property to the amount of \$12,000 or upward has been given, devised or bequeathed in trust for the purpose of establishing a home for worthy indigent old women, of such county, the Board may appropriate a sum not exceeding the amount so given, devised or bequeathed as above. The limit, however, of any such appropriation being \$25,000.

**Note:** This section must be construed in connection with Sec. 5950, enacted in 1899, Sec. 523, this book.

(Acts 1901, p. 323, Sec. 9744.)

**130. Duty of Board—To maintain county asylum.** Every county shall maintain a county asylum in addition to any other charitable institution permitted by law, and shall relieve and support therein such poor and indigent residents of the county as may be placed there by the overseers of the poor. The Board may contract with other charita-

ble institutions within the state for such relief and support of the poor therein maintained as a public charge of such county.

**Note:** For appointment and duties of superintendent county asylum, Secs. 179-179e this book.

**130a. Appropriation for township poor.** The council shall appropriate and the Board advance to the township trustees, who are by law the overseers of the poor, the money necessary for the relief and burial of the poor in each township, which shall be accounted for and repaid to the county treasury as mentioned in another section. See Sec. 139 this book.

**Note:** For levy of taxes for township poor, Sec. 139 this book.

(Acts 1901, p. 323, Sec. 9751.)

**131. Limit of \$15 poor relief to one family.** The law limits the amount of relief by the township trustee to any poor person or family at \$15, which does not include expenditures for burial, medical relief or assistance to children under the compulsory law. Before further aid can be made to him or them, a statement of the case must be presented to the Board with full detail as to names, previous occupation, condition of health, fitness for labor, capacity and ability for work, names of near relatives in the township, if any, and efforts made by trustee to secure employment for those able to labor.

(Acts 1901, p. 323, Sec. 9752.)

**132. When and how Board grants additional relief.** On inspection of the schedule furnished by the applying township trustee, the Board may authorize him to give additional relief to the person or persons.

Duplicate copies of the statement must be filed, one for use of the state board of charities.

(Section 9757.)

**133. Reports of all relief to state board of charities.** All allowances for charities made from the public funds must be reported quarterly by the auditor to the state board of charities.

(Acts 1901, p. 323, Sec. 9759 and 9760.)

**134. Allowances forbidden without trustees' reports.** The statute requires every township trustee and every person who administers relief from the public funds to the poor, sick and needy who are not inmates of any public institution, to keep a record showing full name, age, sex, color, married or single, nationality and dates such relief was given, and other particulars.

Quarterly, two copies of the record shall be filed with the Board, and it is unlawful for the Board to approve or allow the payment of any relief to any person who is not an inmate of a public charitable institution until the said two copies are filed with the auditor. That officer forwards quarterly one of such copies to the state board of charities.

(Acts 1901, p. 323, Sec. 9761.)

**135. Right of appeal by pauper to Board.** If any person shall suppose he or she is entitled to the benefit of the poor relief under the law, and the township trustee refuses so to give, upon application of such person the Board, if it thinks proper, may direct such trustee to relieve such person on his or her application therefor.

(Acts 1901, p. 323, Sec. 9764.)

**136. When non-resident likely to become public charge.** Upon complaint of any township trustee, any justice of the peace by warrant directed to any constable or other person designated in such warrant may cause any non-resident poor person in his township, likely to become a public charge, to be sent and conveyed, at the expense of the county, to the place where such person belongs, if same can be conveniently done. But if such poor person can not be so removed, such person shall be relieved by the township whenever such relief is needed.

(Acts 1901, p. 323, Sec. 9771.)

**137. Annual January poor report of trustees.** Township trustees shall make their annual settlements, during the first ten days in January, with the Board, or oftener if the Board directs, of all poor relief for the past year, and file all vouchers therefor as required by law.

(Section 9772.)

**138. Semi-annual settlement for poor.** Boards are directed to settle with the overseers of the poor in the several townships at least once in every year, and oftener if they shall deem it necessary.

(Acts 1907, p. 256, Sec. 9778.)

**139. Tax levy for poor in September.** The county auditor of each county shall report to the Board of County Commissioners on the first day of the regular September term of said court, annually, the amount advanced during the preceding nine months and an estimate of the same for the remaining three months of the then current calendar year, to the overseer of the poor for poor relief and for medical attendance of the poor of each township by said Board. When the township levies are made the proper authorities of each township, for the poor of which any such advancements have been made, shall levy a tax upon the property of such township, to reimburse the county treasury for payments made on such advancements, which taxes shall be collected as are other township taxes, and shall be paid into the county treasury. If the proper authorities of any township shall fail to levy a sufficient tax to repay such advancements, the county auditor shall levy the same. The county auditor shall keep a debit and credit account with each civil township, showing the amounts received on said levy and the amounts advanced by the boards of county commissioners to the overseers on account of the relief and burial of the poor, and on the first day of January of each year shall balance the account and as soon thereafter as possible transmit a statement of the balance to the over-



seers of the poor of the townships. Such balance shall be taken into account in making the levy for the reimbursement of the county the ensuing year.

(1 R. S. 1852, p. 401, Sec. 9780.)

**140. Asylum for the poor.** It shall be lawful for the Board of County Commissioners of any county in this state, whenever it may deem it advisable, to purchase a tract of land in the name of such county, and thereon to build, establish and organize an asylum for the poor, and to employ some humane and responsible person, resident in such county, to take charge of the same, upon terms and under such restrictions as the Board shall consider most advantageous for the interests of the county, who shall be called the "superintendent of the county asylum". Where two or more counties shall have jointly purchased any tract of land, and erected an asylum for the poor of their several counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties to jointly purchase land, erect an asylum, or do other things proper and necessary for the relief and comfort of the poor within the counties forming such joint ownership, as is by this act provided.

(Acts 1 R. S. 1852, p. 401, Sec. 9788.)

**141. Duties superintendent of county asylums.** It shall be the duty of the superintendent of the county asylum to receive into his care and custody all persons who may become a county charge as paupers, to take such measures for the employment and support of such paupers, and to perform such other duties as the Board shall from time to time, establish, order and direct, consistent with the laws of the state.

(Acts 1 R. S. 1852, p. 401, Sec. 9790.)

**142. How money may be raised to erect asylum.** To raise the sum necessary for the purchase of lands, the erection and furnishing of the buildings for such county asylum, the Board shall have power to levy a tax on the property liable to be assessed for raising county revenue, limited to one-fourth in addition to the rates at which such property may be assessed by the existing laws.

**Note:** This section is modified by Sec. 5932 Burns R. S., Sec. 208 this book, and must be construed in connection therewith.

(Acts 1 R. S. 1852, p. 401, Sec. 9791.)

**143. Duty of Board on completion of asylum.** Upon completion of suitable county asylum buildings the Board shall direct the removal of all persons who have become a permanent charge upon the county and arrange for their employment and support. Thereafter it becomes the duty of the township trustee to cause removal to the asylum from his township of such public charges.

This section must be construed with other laws placing certain indigent persons with other charitable institutions.



(Acts 1899, p. 118, Sec. 9792.)

**144. Bond of superintendent.** The superintendent of the county asylum shall give a freehold security bond at a sum to be fixed by the Board, of \$500 to \$5,000, conditioned for the faithful discharge of duty.

He shall report to the Board, each spring and fall in detail as to the admission, health, fitness for labor, result of industry and expense incurred of each inmate of the asylum.

The members of the Board, in person, shall annually inspect such asylum with regard to its fitness in all respects for the object of its establishment.

(Acts 1 R. S. 1852, p. 401, Sec. 9795.)

**145. Board may discontinue county asylum.** The Board may discontinue the county asylum, and such property, real and personal, may be sold, leased or otherwise disposed of, or applied in such manner as may be best for the interests of the county.

Attention is here directed to section 5900, Acts 1907, p. 580, relative to the manner in which public property shall be sold. Also to Sec. 595, Acts 1899, p. 343, relative to the required authority of the council as to sales and purchases of public property valued at \$1,000 or more.

(Acts 1 R. S. 1852, p. 401, Sec. 9797.)

**146. Board appoints board of visitors.** The Board may, at its discretion, appoint a board of visitors to consist of one person from each township in the county, or a less number of persons, as thought best, to visit the county asylum at least once each year and to report to the Board its condition, the treatment, management and condition of its inmates.

Note: See Sec. 365 of this book.

(Section 9798.)

**147. Compensation of board of visitors.** The Board is required to make a reasonable compensation to such visitors thus appointed.

(Acts 1881 S. p. 580, Sec. 9799.)

**148. Matron for children in county asylum.** The Board of a county having children of sound mind between the ages of one and sixteen years, who are inmates of a county asylum, are authorized to select and appoint as matron, a woman of good moral character, sound judgment and suitable age and experienced in the care and training of children, and willing to accept the charge on the terms of the act, and put such children in her care and custody, at some convenient and suitable place separate from the county asylum.

(Acts 1881 S. p. 580, Sec. 9801.)

**149. Duties of such matron.** The general duties of the matron thus appointed are: to provide suitable food and clothing; to give them proper home training and education; and to further this, to send all of school age to the most convenient common school in the district, to

be there received and taught, at least 3 months in the year; to engage such children in some suitable active labor when not at school or engaged in study, to the end that they may become useful, industrious and self-supporting citizens.

(Acts 1881 S. p. 580, Sec. 9802.)

**150. Compensation of matron.** As compensation for the services of such matron, the Board shall allow a per diem of not less than 25 cents nor more than 30 cents per each child committed to and provided for by her.

Should the matron not have a suitable house and grounds of her own, the Board may purchase for her occupancy and use, a suitable house, ground for a garden and a cow.

Payments to her shall be quarterly and out of the county treasury.

(Acts 1881 S. p. 580, Sec. 9803.)

**151. When second matron may be appointed.** If there are more than 25 of such children, the Board may appoint a second matron, and if more than 40, a third matron, and the children divided, if the Board thinks this to be an advantage; but in no case shall the per capita per diem allowance of 30 cents be increased. Each matron shall receive the same pay.

(Acts 1881, S. p. 580, Sec. 9804.)

**152. Matron to seek suitable homes for children.** To relieve the county of the charge of such children, each matron shall seek suitable homes within the county for the children; but none shall leave her control except by consent of the Board.

The person accepting a child shall agree with Board to provide for and care for such child in every particular as such matron is required to provide for the children in her care.

(Acts 1881 S. p. 580, Sec. 9805.)

**153. Matron keeps history of each child.** Each matron shall keep a complete record of the history of each child and shall visit and examine condition and treatment of each child which is placed out, and if the agreement as to proper treatment, provision and schooling be not kept, the Board shall authorize the matron to recover the child. The Board may direct proper suit for redress for any injury to the child.

All necessary expenses of the matron in this work to be allowed by the Board.

(Acts 1881 S. p. 580, Sec. 9806.)

**154. Board's duty to appoint board of visitors.** The Board at the time it appoints such matron, shall elect and appoint three residents of the county, two of whom shall be women experienced in the raising of children, as a board of visitors, to visit and examine condition of the homes and manner the children therein are kept and treated by the matron. Quarterly visits are required and a report of each to the Board.

In case of neglect, or failure of duty, the Board shall remove such matron and appoint another in her place.

(Acts 1881 S. p. 580, Sec. 9807.)

**155. Board provides home for children.** The Board shall provide such home, having children in care of a matron, at the expense of the county, with necessary medicines and competent medical attention for them when sick; also for burial of any who may die while in care of such matron; and the cost of the necessary school books.

(Acts 1881 S. p. 580, Sec. 9808.)

**156. When resident child may be with matron.** Upon application and a satisfactory showing to the Board any orphan resident child of proper age, without means of support and no friends who will provide for it, may be placed in care of the matron as are the other children.

(Acts 1881 S. p. 580, Sec. 9809.)

**157. Responsibility for child, when ceases.** The liability of the county for care and provision of each child placed with a matron ceases when a suitable home is procured.

The Board at its discretion may ordain a general rule to cease liability when child is 16 years of age. Such child may remain with the matron at her expense, unless such will interfere with the comfort, employment and progress in industry and learning of the other children.

### CLAIMS.

(Acts 1879 S. p. 196, Sec. 6002.)

**158. How claims shall be filed.** Whenever any person or corporation shall have any legal claim against any county, he shall file it with the county auditor, to be by him presented to the Board.

**Note:** This section must be construed in connection with Sec. 5955 Burns R. S., enacted in 1899, Sec. 189, this book.

(Acts 1899, p. 174, Sec. 6003.)

**159. County to furnish necessary blanks.** The Board shall cause to be furnished proper blank forms for claims and affidavits to be filed against the county. Auditors are prohibited from making a charge for making such affidavits.

(Acts 1897, p. 187, Sec. 6004.)

**160. When Board may allow claims.** Boards are prohibited from making any allowance, and the auditor from drawing a warrant except at a regular or special meeting of the Board. The act excepts as to the drawing of a warrant ordered by a court of competent jurisdiction and warrants relating to the management of school fund loans and insanity inquests.

(Acts 1879 S. p. 106, Sec. 6005.)

**161. Duty of boards in matter of filed claims.** The Board shall examine into the merits of all claims presented; and may in their discretion, allow any claim in whole or in part, as they may find it to be just and owing.

**Note:** This section must be construed in connection with Sec. 5955 Burns R. S., enacted in 1899, Sec. 189, this book.

(Acts 1897, p. 187, Sec. 6008.)

**162. Exceptions as to certain claims—Five days.** All claims to be allowed by the Board, shall be duly itemized and verified by the claimant, or by some one in his behalf, and shall have been filed in the auditor's office, and by him placed on the claim docket at least five days before the first day of the session of the Board.

Claims for the payment of services of officers of the commissioners' court rendered at such term, and for services of viewers or reviewers of highways may be allowed at the session at which they are filed.

(Acts 1909, p. 146, Sec. 7546n.)

**163. Exception as to state board of accounts.** Another exception appears in Acts 1909, p. 146, Sec. 14, wherein the auditor is required to issue his warrant, without any appropriation being made therefor, upon the certificate of the state examiner of the state board of accounts, for expense of examination and investigation of field examiners of that department.

(Acts 1911, p. 413, Sec. 6004b.)

**164. Exception as to judgment against county.** The act of 1911, p. 413, re-enacts: that the auditor shall issue his warrant for an allowance by the Board for which an appropriation has been made by the proper authority.

Further, that upon the judgment, decree or order of any court of common law jurisdiction, where the county is a party, and process has been duly served for payment of such claim, and the filing of a certified copy of such judgment decree or order, with the auditor, and the allowance of such claim by the Board, the auditor shall issue his warrant therefor.

(Acts 1913, p. 61, Sec. 1652.)

**165. Exception as to salaries of judges.** Still another exception is found in Acts 1913, at page 61, providing for an increase of salary of judges of the circuit or superior courts in a county containing a city of 30,000 population, or cities of aggregate population of 60,000, on petition of 20 or more resident freeholders; the Board can fix an increase, not in excess of \$1,500, payable by such county, and for which no appropriation is required by the council to authorize such payment.

(Acts 1911, p. 365, Sec. 8323b.)

**166. Exception as to local option elections.** The act of 1911 provides for the payment of the expenses of an election for city or township local option, without any specific appropriation being first made therefor.

(Acts 1911, p. 414, Sec. 7724a.)

**167. Exception as to expenses of certain gravel roads.** That whenever, in the past, or hereafter, the qualified electors of any township or townships, including towns or cities in said township or townships have voted, or may vote for the improvement by grading, graveling, paving with stone or other paving, or macadamizing material, any road or roads said township or townships under any law of this state, and



the Board of County Commissioners of the county wherein said road or roads are situated has advertised according to law for bids for the construction of said road or roads and has received no bid within the estimated cost thereof for the construction of said road or roads, and two years have elapsed since the first advertisement for such bids, it shall be the duty of such Board of Commissioners, upon the expiration of said two years, to pay from the general funds of the county, without an appropriation being made therefor, the fees due the engineer, surveyor, viewers, election officers, cost of advertising, election supplies, and all fees, costs, and expenses incurred in such proceeding, which sums so paid shall be repaid said county by the township or townships wherein said election was held, in equal proportions by an annual levy of a tax by said board upon all the assessed property of said township or townships collectible as other taxes are collected within not more than three years.

(Acts 1897, p. 187, Sec. 6009.)

**168. Penalty for illegal allowances.** Any violation of the act of 1897, p. 187, being 6008 Burns R. S., Sec. 162, this book, by the auditor or any member of the Board, is punishable by a fine of not over \$50, and the auditor is liable on his official bond for double the amount of the warrant so drawn, with costs of plaintiff taxpayer.

(Acts 1905, p. 584, Sec. 2586.)

**169. Penalty for filing false claim.** Whoever knowingly presents a false claim to the Board, for the purpose of procuring an allowance for such; or whoever knowingly receives payment for any such fraudulent claim, on conviction shall be imprisoned in the state prison not less than two years and fined \$10 to \$1,000.

### COAL MINING.

(Acts 1911, p. 658, Sec. 8624a.)

**170 Miners' Examining Board, qualifications.** In counties of the State where coal mining is carried on, the Board shall appoint a Miners' Examining Board, to consist of two coal miners with, at least, five years' practical experience in mining coal, and at the time engaged as such in the county, and one member who is a coal operator or miner, likewise, a resident of the county.

Terms of such appointees hold until the succeeding first day of January, or until successors are appointed and qualified. Any and all vacancies to be filled by the Board. For compensation of the members see "Fees and Salaries, 1913."

### COLISEUMS.

(Acts 1913, p. 951, Sec. 5917b.)

**171. Procedure to erect—Second class cities.** Under the provisions of act 1913, at page 951, counties in which are located cities of the second class are authorized to erect memorial buildings, auditoriums and coliseums in co-operation with private associations and corporations.



The line of procedure embraces a petition in writing to the Board, setting forth the general plan of the proposed building, showing its probable dimensions, capacity and estimated cost, and the purpose of the petitioner to join with the county in its erection.

The Board finding that the public welfare will be promoted, shall by a declaratory resolution agree to join the petitioner in the erection and maintenance of such building, upon the condition that the petitioner will pay, at least, one-third of the entire cost thereof.

Such agreement, however, shall not be effective until ratified by the qualified voters of the county at a special election, the date of which is fixed by the Board.

The Board then makes its order to the auditor to give notice for 20 days by publication two weeks in a daily newspaper printed in the county, of such election and the purpose of same.

The act gives the manner in which the election shall be held, and directs the Board to appoint two election officers per each precinct in the county one of whom shall be a freeholder, who shall be designated judge, and the other member shall be designated election clerk. Such officers are required to take an oath to fairly, honestly and impartially conduct such election and make true returns. The Board shall prepare and distribute the ballots to the various judges. On the day following the election the returns being made the Board shall canvass the vote cast, and if in favor of the erection of the building proposed, such agreement with the petitioner shall become binding, whenever the petitioner shows to the satisfaction of the Board that it has the financial ability to furnish its share of the money required.

The Board having confirmed its resolution, there shall at once be formed a board consisting of seven persons to be known as "Coliseum Directors" which shall have full authority over such institution in the building and maintenance of same.

The three members of the Board and the county auditor shall be coliseum directors, ex-officio, and the other three to be chosen by the petitioning association, joining the county in the erection of such building. These are to be certified to the auditor and serve one, two and three years respectively.

Other matters relating to construction and management of the joint ownership appear in the sections of the act, which should have the reference of the Board. This act only obtains to the counties of Allen, St. Joseph, Vanderburgh and Vigo.

### CONSTITUTION.

(Section 156.)

**172. Powers of Boards.** The constitution of the state provides that the General Assembly may confer upon Boards doing county business, powers of a local administrative character.

(Section 160.)

**173. Members shall reside in county.** The courts have held that a County Commissioner must reside within his county during his term of office.

## COUNTY CORONER.

(Acts 2 R. S. 1852, p. 13, Sec. 9435, 9119.)

**174. Bond of Coroner—Acceptance by Board.** The county coroner shall give bond in the penal sum of \$5,000, to be approved by the Board.

(Acts 2 R. S. 1852, p. 13, Sec. 9439.)

**175. Allowance to coroner for post mortem.** At a coroner's request, when a surgeon or physician is required to attend and to make a post-mortem examination, the coroner shall certify such service to the Board, who shall order the same paid out of the county treasury.

Under an act of 1879, coroner's juries were abolished.

## COSTS, LIABILITY FOR.

(Acts 1881 S. p. 240, Sec. 617.)

**176. Counties liable for, when.** In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.

**Note:** The courts have decided that counties and townships may become liable for costs.

## 177.

## COUNTIES—AREAS.

Areas: Square miles. From United States Census 1910. INDIANA—36,045 square miles.

Adams .....	337	Jackson .....	518
Allen .....	661	Jasper .....	562
Bartholomew .....	407	Jay .....	375
Benton .....	408	Jefferson .....	364
Blackford .....	168	Jennings .....	383
Boone .....	427	Johnson .....	322
Brown .....	324	Knox .....	510
Carroll .....	377	Kosciusko .....	541
Cass .....	416	Lagrange .....	387
Clark .....	375	Lake .....	492
Clay .....	361	Laporte .....	595
Clinton .....	408	Lawrence .....	456
Crawford .....	303	Madison .....	450
Daviess .....	433	Marion .....	397
Dearborn .....	313	Marshall .....	441
Decatur .....	378	Martin .....	339
Dekalb .....	370	Miami .....	381
Delaware .....	392	Mcroe .....	416
Dubois .....	427	Montgomery .....	501
Elkhart .....	462	Morgan .....	406
Fayette .....	216	Newton .....	405
Floyd .....	148	Noble .....	417
Fountain .....	395	Ohio .....	85
Franklin .....	394	Orange .....	407
Fulton .....	367	Owen .....	393
Gibson .....	486	Parke .....	447
Grant .....	423	Perry .....	384
Greene .....	543	Pike .....	338
Hamilton .....	399	Porter .....	415
Hancock .....	307	Posey .....	402
Harrison .....	486	Pulaski .....	432
Hendricks .....	408	Putnam .....	483
Henry .....	397	Randolph .....	447
Howard .....	297	Ripley .....	448
Huntington .....	386	Rush .....	409

Scott .....	190	Vanderburgh .....	233
Shelby .....	407	Vermillion .....	254
Spencer .....	403	Vigo .....	409
Starke .....	305	Wabash .....	425
Steuben .....	305	Warren .....	368
St. Joseph .....	460	Warrick .....	392
Sullivan .....	460	Washington .....	519
Switzerland .....	222	Wayne .....	411
Tippecanoe .....	503	Wells .....	365
Tipton .....	260	White .....	507
Union .....	162	Whitley .....	338

## 178.

## COUNTIES—POPULATION.

From United State Census, 1910.

INDIANA—2,700,876.

Adams .....	21,840	Lawrence .....	30,625
Allen .....	93,386	Madison .....	65,224
Bartholomew .....	24,813	Marion .....	263,661
Benton .....	12,688	Marshall .....	24,175
Blackford .....	15,820	Martin .....	12,950
Boone .....	24,673	Miami .....	29,350
Brown .....	7,975	Monroe .....	23,426
Carroll .....	17,970	Montgomery .....	29,296
Cass .....	36,368	Morgan .....	21,182
Clark .....	30,260	Newton .....	10,504
Clay .....	32,535	Noble .....	24,009
Clinton .....	26,674	Ohio .....	4,329
Crawford .....	12,057	Orange .....	17,192
Daviess .....	27,747	Owen .....	14,053
Dearborn .....	21,396	Parke .....	22,214
Decatur .....	18,793	Perry .....	18,078
Dekalb .....	25,054	Pike .....	19,684
Delaware .....	51,414	Porter .....	20,540
Dubois .....	19,843	Pcsey .....	21,670
Elkhart .....	49,008	Pulaski .....	13,312
Fayette .....	14,415	Putnam .....	20,520
Floyd .....	30,293	Randolph .....	29,013
Fountain .....	20,439	Ripley .....	19,452
Franklin .....	15,535	Rush .....	19,349
Fulton .....	16,879	Scott .....	8,323
Gibson .....	30,137	Shelby .....	26,802
Grant .....	51,426	Spencer .....	20,676
Greene .....	36,873	Starke .....	10,567
Hamilton .....	27,026	Steuben .....	14,274
Hancock .....	19,030	St. Joseph .....	84,312
Harrison .....	20,232	Sullivan .....	32,439
Hendricks .....	20,840	Switzerland .....	9,914
Henry .....	29,758	Tippecanoe .....	40,063
Howard .....	33,177	Tipton .....	17,459
Huntington .....	28,982	Union .....	6,260
Jackson .....	24,727	Vanderburgh .....	77,438
Jasper .....	13,044	Vermillion .....	18,865
Jay .....	24,961	Vigo .....	87,930
Jefferson .....	20,483	Wabash .....	26,926
Jennings .....	14,203	Warren .....	10,899
Johnson .....	20,394	Warrick .....	21,911
Knox .....	39,183	Washington .....	17,445
Kosciusko .....	27,936	Wayne .....	43,757
Lagrange .....	15,148	Wells .....	22,418
Lake .....	82,864	White .....	17,602
Laporte .....	45,797	Whitley .....	16,892

## COUNTY ASYLUMS.

(Acts 1913, p. 961, Sec. 9781.)

**179. New 1913 law—Superintendent—Qualifications.** It shall be the duty of the Board of County Commissioners in each county in Indiana, on the first Monday of January, 1914, to appoint a superintendent of the county asylum, who will serve for four (4) years from the first day of March next ensuing unless sooner removed for cause as prescribed in a subsequent section of this act; subsequent appointments on expiration of terms or on vacancies caused by resignation, shall be for four (4) year terms, ending on the last day of February of any year, and the terms of the present incumbents shall expire on March 1, 1914. Each superintendent appointed according to the terms of this act shall receive such annual salary, in addition to quarters and board for himself and family in the county asylums, as shall be fixed by the said Board of County Commissioners: Provided, That in any county where there may have been a superintendent of a county asylum appointed on a contract extending beyond the date aforesaid, namely, March 1, next following the January, 1914, session of the Board after this act becomes of effect, then the appointment under the provisions of this act shall commence at the expiration of aforesaid contract, and shall be for a term of so much less than four years as the period that the said contract runs after aforesaid March 1. In appointing a superintendent of the poor asylum, the commissioners shall select a reputable citizen of good moral character, kind and humane disposition, good executive ability, who has had a good common school education and is a skilled and experienced farmer. No considerations other than character, competence and fitness shall be allowed to actuate the commissioners in selecting, continuing or discharging any superintendent or other officer. No relative of any member of the Board of County Commissioners shall be appointed superintendent or employed in any capacity and no relative of the superintendent, except his wife as matron, shall be employed in any capacity with such asylum except by the consent of the Board of County Commissioners.

(Acts 1913, p. 961, Sec. 9782.)

**179a. Rules and regulations, employes.** The Board of County Commissioners of each county shall prescribe such rules and regulations as may, in their judgment, be necessary for the management of the asylum for the poor. With the advice and assistance of the superintendent of the county poor asylum they shall regulate the number and fix the compensation of such matrons, assistants, nurses, attendants, farmers, seamstresses, laborers, or other employes as may be needed for the care and control of the asylum. They may remove the superintendent from office, at any time, but only for cause, which cause shall be entered in the record book of the commissioners' court and such superintendent shall have the right to prosecute his appeal to the circuit court of such county within ten days in the same manner as other appeals are taken from the action of said Board. In all cases the terms of the superintendents of county asylums who shall be appointed pursuant to this act,



shall end on the last day of February. The Board of County Commissioners, shall, as a Board, visit and inspect the poor asylum at least once in every three months and enter a report of such inspection, stating needs and conditions of the institution, on the records of commissioners' court, which shall be signed by each member of the Board.

(Acts 1899, p. 103, Sec. 9783.)

**179c. Employes—Appointing—Removal.** The superintendent shall appoint such matrons, assistants, nurses, farmers, laborers or other employes as shall be needed for the work of the asylum. The superintendent may remove and dismiss any officer or employe whom he shall have appointed at any time, which removal he shall report in writing to the Board of County Commissioners at their next regular meeting. It shall be his duty to promptly remove any officer or employe who shall be guilty of drunkenness, profane or abusive language in the presence of the inmates, cruelty to the inmates, lewdness or any other offense against the laws of Indiana or against public decency. No political, family or other improper influence shall be allowed to actuate the superintendent in appointing or dismissing any subordinate officer or employe, but considerations of character, merit and competence shall be the sole and only reasons for any such appointment or dismissal.

(Acts 1899, p. 103, Sec. 9784.)

**179d. Duties of superintendent.** It shall be the duty of the superintendent of the county poor asylum to manage the asylum and its farm to the best interests of the county. He shall maintain order and discipline, he shall assign a reasonable amount of labor to every inmate who is able to perform the same, and no inmate shall be excused from labor except for cause by the superintendent, or by the county physician, but such excuse by the physician shall be for a definite time except in the case of aged paupers over seventy years of age or of cripples or persons suffering from incurable disease or from any other physical or mental disability which unfits them for labor, to whom a permanent excuse may be given by the physician. All inmates refusing to perform the task assigned them by the superintendent, may be dismissed from the asylum by him and can only be readmitted within the period of six weeks after such dismissal, with the consent of the superintendent or upon an order from an overseer, of the poor which shall have been endorsed by the chairman of the Board of County Commissioners. The superintendent shall carefully observe the rules and regulations prescribed by the County Commissioners and shall further be guided by suggestions which may be made to him by the Board of State Charities and by the Board of County Charities and Correction in counties where the same shall exist. He shall make such reports from time to time to the county commissioners as they may order and shall make such reports to the Board of State Charities as shall be required by them.

(Acts 1913, p. 961, Sec. 9785.)

**179e. Superintendent files estimates.** On or before the Thursday preceding the first Monday in March, June, September and December



of each year, the superintendent of the county asylum shall file with the county auditor an estimate of the supplies of meats, groceries, dry goods, fuel, house furnishings and other material for the subsistence of the inmates and the maintenance of the asylum needed to be purchased for the county poor asylum during the subsequent three (3) months. The auditor shall thereupon divide the estimate for supplies under appropriate headings and shall submit the same to the inspection of the Board of County Commissioners during their regular session not later than the first Thursday after the first Monday in March, June, September and December of each year. The commissioners shall at once inspect the estimates and make such amendments thereto as they may deem necessary. Said estimates shall be open during the session of the commissioners' court and thereafter for the inspection of any citizen. The auditor, not later than the first Monday in March, June, September and December of each year, shall give notice by advertisement in at least one paper published at the county seat that the estimates will be on file in his office and shall request bids for contracts for furnishing the needed supplies for the period of three months. The day for receiving such bids shall be fixed in said advertisement, but not earlier than ten days after the first of said publication. Bids received for supplies of materials needed for the asylum shall be opened by the commissioners in open court and contracts shall be awarded to the lowest responsible bidders. The bids received shall be endorsed by the auditor as accepted or rejected, and shall be preserved on file in the auditor's office and be subject to the inspection of any citizen. The auditor shall notify each successful bidder of the acceptance of his bid, and thereupon a contract for the same shall be duly executed: Provided, That the Board of Commissioners may reject any and all bids and may again advertise for bids in the manner above described. The commissioners in their discretion, may demand a bond from the successful bidders conditioned upon the fulfillment of their contracts, with such sureties as the commissioners may deem advisable. On fulfillment of the aforesaid contracts, bills for the supplies purchased shall be presented to the auditor by those to whom payment is due, which bills shall be examined by the superintendent of the poor asylum and the auditor, when if found correct they shall be attested by the signature of the superintendent of the county poor asylum, certifying that the supplies therein specified have been received by him and have been of the quality contracted for, and by the signature of the auditor certifying that the prices and quantities agree with the contracts on file in his office for the same. The bills so certified shall be presented by the auditor to the commissioners, who shall examine the same, and if they approve them they shall make allowances for the amounts and order the issue of warrants in the manner prescribed by law for the allowance and payment of claims against the county by County Commissioners. The superintendent by order of the commissioners and under their direction may from time to time purchase such live stock, implements and other supplies to be used in farming as shall be needed upon the county farm. Claims for payment of the same shall be made in open court upon sworn statements of the claimants, certified as cor-

rect by the superintendent of the county poor asylum, and when found correct they shall be approved by the commissioners and warrants shall be drawn in the manner prescribed by law. The purchases authorized by this section shall be made in the manner that other supplies are required to be purchased for the county, and claims therefor shall be allowed in the same manner that other claims against the county are allowed: Provided, That the county council shall appropriate and the Board of County Commissioners shall allow for the necessary help and equipment of such poor asylum and for the necessary tools, implements, vehicles, utensils, live stock and everything necessary to equipment and maintenance of the farm.

### COUNTY COUNCIL.

(Acts 1899, p. 343, Sec. 5939.)

**180. Expenditures and warrants.** Funds due the State or any township, town or city of the county from the county treasury may be paid in the manner and upon the authority prescribed by law other than this act, but except as to such funds no money shall be paid from the county treasury, otherwise than upon a warrant drawn by the county auditor. Except as to salaries of county councilmen this act shall not be construed as authorizing the auditor to draw any warrant that is not authorized by existing or other laws than this act. Appropriation by the county council shall not be necessary to authorize a warrant drawn and payment made out of the county treasury in the following instances, namely: Of any money belonging to the state; of any money belonging to any school fund, whether principal or interest; of any money belonging to any fund of any township, town, or city of the county; or of any money due to any person, company or corporation which has been paid into the county treasury pursuant to assessment on persons or property of the county in territory less than that of the whole county for any public improvement or purchase thereof, such as ditches and drains and repairs thereof, straightening water courses, making levees and repairs thereof, or establishing and constructing highways, turnpikes, gravel or macadamized roads; of any money due to any person, company or corporation, which has been paid into the treasury to redeem from any tax or other sale; or of any money so due that has been paid in pursuant to authority of law as a tender or payment to the person, company or corporation; or taxes erroneously paid. In all the above enumerated instances payment may be made out of the county treasury upon the authority and in the manner prescribed by law without appropriations by the county council. In all other instances no warrant shall be drawn upon, or money paid out of the county treasury, unless an appropriation by the county council therefor has been made, for the calendar year in which the payment is made, and which appropriation remains unexhausted.

(Acts 1911, p. 194, Sec. 9459.)

**181. County Auditor—Warrants—Exemption from liability.** When heretofore or hereafter, in good faith, any auditor of any county in

the State of Indiana, pursuant to the order or authority of the Board of Commissioners of any such county, or pursuant to the judgment or order of any court of common law jurisdiction in any such county, in any case wherein said county was a party and was duly served with process, shall have issued his warrant upon the treasurer of said county, then and in such event, no civil suit shall be maintained against said county auditor or his bondsmen for the issuance of said warrant although such warrant shall have been drawn pursuant to some order of the Board of Commissioners or judgment of the court which is either void or voidable, but the validation of such act of the auditor shall not prevent the recovery of any sums of money from any person receiving the same that might have been recovered if this act had not been passed.

### COUNTY COUNCIL—ADVERTISEMENTS.

(Acts 1899, p. 343, Sec. 5964.)

**182. Legal rates for advertisements.** The act fixes the advertising rates to be paid for each newspaper advertisement, by the Board, at \$1 per square of 250 ems for the first insertion, and for each additional insertion at 50 cents. The advertisement is to be set in solid reading type same as the paper is set, without leads or other increasing matter, with two display lines to each advertisement, not greater than four lines of the ordinary newspaper type.

The council is required to make the necessary appropriation for this expense.

**Note:** To the same effect, see Sec. 4 this book.

### COUNTY COUNCIL—APPROPRIATIONS.

(Acts 1899, p. 343, Sec. 5940.)

**183. Duty as to specific appropriations.** Separate accounts for each specific appropriation made by the council shall be kept by the auditor, and all warrants shall state specifically on which appropriation it is issued.

Overdraft on account, of any fund, is unlawful, or any appropriation to be diverted to another account. Any willful violation of this act by a county auditor shall be deemed a misdemeanor and on conviction subject to a fine not exceeding \$1,000, and a jail imprisonment not exceeding six months.

(Acts 1911, p. 194, Sec. 5940.)

**184. Exception as to judgment against county.** Under the provisions of an act, 1911, at page 194, where the auditor, acting in good faith, pursuant to an order of the Board, or a judgment of any court of common law jurisdiction, the county having been duly served by process, shall have issued his warrant therefor then and in such event he and his bondsmen are relieved from civil suit.

**Note:** See Sec. 181 this book.

(Acts 1913, p. 296, Sec. 5938.)

**185. Emergency Appropriation—Special Meeting.** If at any time after the adjournment of the regular annual meeting in September, an emergency should arise for further appropriation, for any purpose for which the council is authorized to appropriate by this act, such further appropriations may be made at a special meeting of the council, on estimates prepared and presented as hereinabove provided by an ordinance passed by at least a two-thirds vote of all the members of the council and not otherwise. Each ordinance shall be read upon at least two separate days before its final adoption, except in cases where the aggregate amount of appropriation requested and presented at any such special meeting shall not exceed fifteen thousand dollars it shall not be necessary to read such ordinance on two separate days, but may be passed on in one day.

#### COUNTY COUNCIL—ANNUAL STATEMENT.

(Acts 1899, p. 343, Sec. 5963.)

**186. Board's annual financial January statement.** The Board at its first session in every year shall make a fair and accurate statement of the receipts and disbursements of the preceding calendar year, and cause the same to be posted at the court house door, and published in two leading newspapers, if any, representing the two political parties casting the largest number of votes in the county at the preceding general election; and it shall be unlawful for the Board to publish in more than two newspapers.

*Note:* Under the provisions of the act of 1913, at page 761, in all cases where legal publications are required to be made in weekly newspapers, it is lawful to publish either in a daily or weekly newspaper. See Sec. 1346a Burns R. S., Sec. 7, this book.

Sec. 3 this book governs as to the selection of newspapers.

#### COUNTY COUNCIL—BIDS.

(Acts 1899, p. 343, Sec. 5959.)

**187. Non-collusion affidavit to accompany bids.** All bids, authorized to be received by any county officer, shall be accompanied with an affidavit of the bidder: "That he has not entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting, nor to prevent any person from bidding, nor to induce any one to refrain from bidding, and that his bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding."

In the event that any notice of collusion shall come to such officer, such bid shall be rejected.

If such notice of collusion comes to such officer after the letting, and it shall appear that the successful bidder is guilty of collusion, denied in his accompanying affidavit, he shall forfeit his contract and the Board shall re-let.



**COUNTY COUNCIL—BORROWING MONEY.**

(Acts 1899, p. 343, Sec. 5949.)

**188. Borrowing money—Limitations—Tax levy.** The authority to borrow money lies exclusively with the council. The limit of the indebtedness of a county shall not exceed an amount equalling two per cent. of its taxable property, as appears on the tax duplicate for the year such loan is made. A bond issue or other county obligations, negotiable or otherwise, may be authorized by the council by an ordinance, and the rate of interest shall not exceed six per cent. per annum. The bonds running not to exceed 20 years.

Bonds shall not be authorized for the payment of current expenses but this may be met by a temporary loan, and only in anticipation of revenue by taxes.

The council shall make the annual levy for county tax, within the legal rate, to pay all current expenses of the county, and to include such temporary loan with interest on the county's indebtedness, and such council shall also make sufficient levy to pay such county indebtedness, if any there be, which before the enactment of this law devolved upon the Board to provide. In the event of a deficiency of the sum expected from such levy, thereby affecting current running expenses, the council shall provide for such in its next annual levy.

Such ordinance by the council authorizing an issue of bonds, shall state the purpose of same, either for paying an indebtedness already incurred, for county expenses, other than current, or for payment of bonds made for lawful purposes issued after passage of this act.

(Acts 1899, p. 343, Sec. 5955.)

**189. Claims itemized—Delivery—Approval.** No warrant shall be drawn by the auditor and no funds shall be paid out of the county treasury in payment of any claim unless the same has been fully itemized and its correctness verified by the claimant, or some one on his behalf, and filed with the auditor more than five days before the first day of the session of the Board of Commissioners at which the same is allowed. No warrant shall be drawn and no funds shall be paid out of the county treasury in payment of any claim for materials or supplies unless the same have been purchased pursuant to the provisions of this act, nor until the same has been approved by the commissioners. The commissioners shall not approve any claim for materials or supplies until they are satisfied that the same have been delivered to the county in compliance with the contract. In every case the person authorized to receive such materials or supplies on behalf of the county shall check up item by item the invoice or bill for the same immediately upon receiving them, and shall certify in writing upon said invoice or bill that the materials or supplies therein listed have been furnished and delivered to him in accordance with the contract; or in case there shall be any deficiency, either in quantity or quality, or any discrepancy between the materials or supplies delivered and the contract, or any failure to comply with the contract in any particular, such person shall certify the facts in writing upon said bill and shall deduct therefrom



the just amount. Such bill or invoice, with such certificate, shall be immediately filed with the auditor, but the same shall not be allowed by the commissioners unless the auditor certifies in writing that the same corresponds as to quality and prices with the contract. Such certificates shall not be conclusive, but it shall be the duty of the commissioners, before approving any claims, to otherwise satisfy themselves that the contract has been complied with.

(Acts 1899, p. 343, Sec. 5956.)

**190. Claims under contract—Allowance—Payment.** In all cases where a claim is filed upon a contract with said commissioners for work to be conducted under the supervision of the county surveyor, or of any architect, engineer, superintendent or inspector appointed by said commissioners, said Board shall not allow such claim until such surveyor, architect, engineer, superintendent or inspector shall certify in writing upon said claim that the work therein mentioned has been performed according to contract, and that the amount of said claim is due and owing by the terms of said contract. Such certificate must be filed with the claim, but the same shall not be conclusive, and it is declared to be the duty of said commissioners to inform themselves as to whether said money is due and owing under the contract, before allowing such claim. No warrants shall be drawn and no funds shall be paid out of the county treasury in payment of any claim on any contract with the commissioners for the execution of any public undertaking, except such contract has been let pursuant to the provisions of this act, nor unless said claim has been filed and allowed by the commissioners in the manner herein required.

#### COUNTY COUNCIL—BONDS, SALE, EXECUTION.

(Acts 1899, p. 343, Sec. 5957.)

**191. Bond sale—Execution of bonds.** Whenever any bonds are authorized to be sold, the auditor shall prepare and place printed copies of the ordinance on file in his office, together with specifications, describing the bonds proposed for sale. Also a list of various outstanding debts of the county, the amount of current assessment of property, and all financial conditions to assist bidders to determine the market value of such bonds.

The act provides for the auditor to make a six weeks newspaper publication of such sale and all conditions and information concerning same, requesting sealed proposals, on a day not earlier than six weeks after such publication. If a satisfactory bid is received the auditor shall let such contract to the highest responsible bidder; provided that such bonds shall not be sold for less than par value and accrued interest to date of sale. When a loan otherwise than the issue of bonds is authorized by the council, the process of filing and publication is the same, except in the case of a loan which does not exceed \$5,000, bids may then be received within three weeks after publication.

Whenever any bonds are to be issued, it shall be the duty of the

auditor, by and with the advice of the county attorney, to cause such bonds to be prepared, engraved and printed and delivered and charged to the treasurer.

All such obligations shall be executed by the Board and attested by the auditor, and all monies received therefor shall be paid to the treasurer who shall deliver the bonds, or notes, to the person entitled thereto. Each of such bonds or notes shall contain a reference to the ordinance authorizing the same and the date of passage.

(Acts 1899, p. 343, Sec. 5958.)

**192. Forms for bond bidders—Certified check.** Whenever, under authority of this act, any county officer shall receive bids for any purpose, the auditor shall prepare and furnish forms for possible bidders.

No erasure or alteration of such form prepared by the auditor, with the approval of the Board, shall be permitted, and no bid can be received that does not comply with this provision.

In case of bonds the bid shall state the full amount of cash which shall be paid by the bidder for the total issue of bonds, and shall be accompanied with a certified check, made payable to the Board for three per cent. of the par value of the offered bonds, to be drawn against moneys deposited in any reliable bank in such county, if any, else in some such bank in the State.

Such check shall be returned to the bidder, if his bid is not accepted, but if the bid is accepted and he does not perform his bid, such certified check will be forfeited.

Similar requirements as to deposit of certified checks, at the discretion of the Board may be required, in any other case where bids are to be received, pursuant to this act.

No bids for any contract or public undertaking shall be received unless accompanied by good and sufficient bond, payable to the Board, signed by at least two resident freehold sureties, or by a surety company, resident or non-resident, to the approval of the Board.

Such bond shall guarantee the faithful performance and execution of the work according to plans, specifications, time, terms, conditions of contract, in case award is made to him, and as contractor to pay all debts, labor, material and the board of laborers.

Similar requirements for bond and surety, may be required by the Board, to be made in any other case where bids are to be received, if deemed for the public interest.

All bids shall be opened during business hours for the first time, in the room of the Board.

The auditor shall indorse either "accepted" or "rejected" on all bids received, and shall preserve them on file in his office, to be subject to the inspection of any citizen.

A suitable contract shall be prepared upon the acceptance of a bid, by the auditor, with the advice of the county attorney for the approval of the Board, to be executed by both parties.

**Note:** The above provisions, as to receiving and opening bids, must be construed with the act of 1913, p. 650, Sec. 5896a Burns R. S., Sec. 430a, this book.

(Acts 1899, p. 343, Sec. 5942.)

**193. County can not be bound beyond appropriation.** No Board of County Commissioners, officer, agent or employe of any county shall have power to bind the county by any contract or agreement, or in any other way, to any extent beyond the amount of money at the time already appropriated by ordinance for the purpose of the obligation attempted to be incurred, and all contracts and agreements, express or implied, and all obligations of any and every sort, beyond such existing appropriation, are declared to be absolutely void.

#### COUNTY COUNCIL—COUNCILMEN.

(Acts 1899, p. 343, Sec. 5918.)

**194. County council—division of counties into councilmanic districts—how styled.** Under provisions of an act approved March 3, 1899, there was created in the several counties of the state a body to be known as "The \_\_\_\_\_ County Council."

It became the duty of the Board to divide the county into four councilmanic districts, as nearly equal in population as possible.

No township to be divided in making such districts.

Three councilmen at large were to be elected in addition to one from each district, and the Board can not change boundaries of such districts oftener than once in six years.

(Acts 1899, p. 343, Sec. 5944.)

**195. Courts can not bind county beyond appropriations.** No court, or division thereof, of any county, shall have power to bind such county by any contract, agreement, or in any other way, except by judgment rendered in a cause where such court has jurisdiction of the parties and subject of the action, to any extent beyond the amount of money at the time already appropriated by ordinance for the purpose of such court, and for the purpose for which such obligation is attempted to be incurred, and all contracts and agreements, express or implied, and all obligations of any and every sort attempted beyond such existing appropriations shall be absolutely void.

#### COUNTY COUNCIL—ESTIMATES BY THE BOARD.

(Acts 1899, p. 343, Sec. 5933.)

**196. Oath required to officer's estimates.** Before the Thursday following the first Monday in August of each year, every Board shall prepare a separate itemized estimate of all money to be drawn by the members of said Board, and of all expenditures to be made by the Board, or pursuant to its order, during the ensuing year for any and all purposes whatsoever.

To such estimate, there shall be appended a certificate verified by oath of the officer preparing the same to the effect that in his opinion the amount fixed in each item will be required for the purpose indicated thereby.

(Acts 1899, p. 343, Sec. 5936.)

**197. Items for Board's estimate to council.** Every estimate required by said section sixteen (16) to be prepared by the Board of County Commissioners shall embrace, in items separate from each other, each of the following matters:

First. As to each building or institution maintained or supported by the county, such as court house, county asylum, work house, jail, or other building or institution of whatever character, maintained or supported in whole or in part by money paid out of the county treasury, the estimate shall show in items separate from each other and separately for each institution: (a) The amount required for construction of new buildings, if any. (b) The amount required for repairs, of premises, itemizing the same as far as possible. (c) The amount for supplies for the institution, itemizing the same. (d) The amount required for employes and agents at each institution, itemizing the same. (e) All other expenses connected with each institution, itemizing as aforesaid.

Second. The amount required for building of bridges, itemizing the same by giving location and amount of each bridge.

Third. Amount required for repair of bridges, itemizing the same.

Fourth. Expenses of commissioners' court, itemizing the same.

Fifth. Salary of the county attorney.

Sixth. Amount of salary or compensation of pauper attorney, if any.

Seventh. Expenses of board of health, itemizing the same.

Eighth. Amount of repair of free gravel roads exclusive of bridges, itemized by naming each road, the length thereof, and amount required therefor.

Ninth. Amounts required for election expenses, showing estimated number of precincts, and by separate items the amounts required for each of the following things: Pay of inspectors, judges, clerks, sheriffs, rent, meals, hauling and repair of booths and ballot-boxes, advertising, billposting, printing and stationery, expenses of election commissioners, expense of construction or purchasing election furniture and supplies.

Tenth. Amounts required for paying principal and interest of bonds and loans maturing during the ensuing calendar year, itemizing the amount required for each loan and issue of bonds.

Eleventh. Amounts required to pay judgments, adjustments of suits, and costs.

Twelfth. Amounts required for the support of inmates of state benevolent institutions, or other benevolent or penal institutions.

Thirteenth. Amounts required for publication of delinquent tax lists.

Fourteenth. Amounts required for the compensation of employes, which are payable out of the county treasury, if any.

Fifteenth. Amounts required for the payment of expenses of county board of review.



Sixteenth. All other items of expenditures to be made by the Board, or pursuant to its order, during the year for which the appropriation is to be made, itemized with particularity.

Where, under the law, the expense of any office of a county officer, or any part thereof, is authorized to be paid out of the county treasury, but requires an order of the Board of County Commissioners to that effect, the estimate of the expenses of such office shall be embraced in the estimate required to be furnished by the county officer, but shall not be embraced in the estimate furnished by the Board of County Commissioners. The power of fixing the rate of taxation in each township for the purpose of raising funds for the payment of the expense of making the tax assessment for such township shall be vested exclusively in the county council, and neither the Board of County Commissioners nor any other officer shall have power to fix the rate for any such purpose whatever. Before the Thursday following the first Monday in August in each year, each township assessor shall prepare an estimate, itemized with as great particularity as possible, of the amount of money required for his office for the ensuing calendar year. Such estimate shall embrace, in items separate from each other, each of the matters required by section sixteen of this act in the case of estimates by county officers.

#### COUNTY COUNCIL—JUDGMENTS.

(Acts 1899, p. 343, Sec. 5945.)

**198. When council may be joined in mandamus proceedings.** No judgment against a county can be enforced without an appropriation made therefor; the council as a body can be, by mandamus proceedings, compelled to make such appropriation, and all members of the council be bound by the judgment. In such matters the Board and county auditor are joined as parties defendant, in order to secure complete and adequate relief in the premises.

**Note:** For exception to this rule see Sec. 164, this book. Sec. 6004b Burns R. S.

(Acts 1899, p. 343, Sec. 5943.)

**199. Penalty for issuing warrant beyond the appropriation.** Every county officer and member of the Board are prohibited from issuing or cause to be issued any bond, certificates or warrant as an obligation of the county beyond the unexpended balance of the appropriation for such purpose; any such official who may attempt to bind such county in any wise beyond the amount of money at the time appropriated and remaining unexpended, shall be liable on his official bond to any person thereby injured, and shall be fined not to exceed \$1,000, and imprisoned in the county jail not more than six months.

(Acts 1899, p. 343, Sec. 5946.)

**200. Payment of money—Intent of act.** Except as to payment of the salary of councilmen herein specifically provided for, this act shall



not be construed as authorizing the appropriation of any money to be paid out of the county treasury, or the drawing of any warrant therefor, or payment of any money out of such treasury, for any purpose whatever for which such payment out of the county treasury is not authorized by law other than this act. The intent of this act is to place limits and checks upon payments out of such treasury, and not to extend or increase them.

**Note:** For modifications of this statute by subsequent legislation, see sections 163-166, this book.

#### COUNTY COUNCIL—PUBLICATION OF NOTICES.

(Acts 1899, p. 343, Sec. 5968.)

**201. Restriction as to publication—Penalty for violation.** It is unlawful for Boards to publish any legal notice, report or statement required to be published at the cost of the county, in more than one newspaper, unless otherwise expressly required by law, and in no case shall the Board pay for publication in more than two newspapers, in the same county.

Any violation of this law is punishable by fine from \$50 to \$500.

**Note:** See Sec. 3, this book.

(Acts 1899, p. 343, Sec. 5954.)

**202. Plans and specification for public work.** In all cases in which the Board of Commissioners are now or may hereafter be authorized by law to contract for the execution of any public undertaking, said Board shall cause to be prepared and placed on file in the office of the auditor complete and detailed specifications of the same, including full and complete drawings if the same consists of the construction or reconstruction or material alteration of any bridge, jail, courthouse, asylum, or any other public structure. Likewise such specifications shall be supplemented by full and complete drawings or models in all other cases where the same are needful or desirable to completely and definitely define the work so proposed to be undertaken. Upon the filing of said specifications and drawings in the office of said auditor, said Board shall cause a brief notice to be published one time in each of two leading newspapers of general circulation, published in the county, if there be such, representing respectively the two political parties casting the highest number of votes in such county at the last preceding general election, informing the public of the general nature of the proposed undertaking, and of the fact that drawings and specifications are on file at such office, and calling for sealed proposals for such work by a day fixed in said publication, but not earlier than two weeks after said publications. In all cases where the amount involved exceeds two thousand (\$2,000) dollars, such advertisement shall be published twice in each of such newspapers, and the time for receiving bids shall be not earlier than four weeks after the first of such publications. Further publications may also be made when deemed for the public interest.

**COUNTY COUNCIL—PURCHASE AND SALE OF REAL ESTATE.**

(Acts 1899, p. 343, Sec. 5951.)

**203. Sale of, only at public auction—Purchase of.** No sale or conveyance of any real estate of the county of the value of \$1,000 or more, and no purchase by the county of any real estate of such value shall take place except pursuant to an ordinance of the council authorizing such sale or purchase and fixing the terms of same.

The acts of 1907 at p. 580, Burns R. S. Sec. 5900, restricts the sale of any county property by the Board except at public auction, and then after a sixty-day newspaper advertisement and by posting up notice at the court house door; should this sale include real estate fetching \$1,000 or more, as above, it shall require an ordinance of the council to legalize such sale. There are a number of laws which authorize the Board, making it a duty, to purchase real estate, but such laws must be construed with the later law requiring a specific appropriation of the council.

**COUNTY COUNCIL—RECOVERY, ILLEGAL PAYMENTS.**

(Acts 1899, p. 343, Sec. 5962.)

**204. Procedure to recover money illegally paid.** Money which has been illegally paid out of the county treasury may be recovered by a suit in the name of the State of Indiana, on relation of the Board, against such officer who unlawfully disbursed or assisted therein, or against the person receiving such fund, or both.

In case the Board fails to institute such suit, any citizen or taxpayer, after thirty days' demand in writing upon such Board, and such Board refuses or fails, may institute suit in the name of the state, on his own relation, for the benefit of the county. In either of such suits, the judgment shall include recovery, interest, attorney fees, and the necessary expenses of the plaintiff.

**SESSIONS.**

(Acts 1899, p. 343, Sec. 5967.)

**205. Regular sessions of the Board of Commissioners.** There shall be a regular session of the Board, beginning on the first Monday of each calendar month, and continuing only so long as the necessary business of such session absolutely requires.

For salaries of the Board of Commissioners see "Fees and Salaries, 1913."

This act also provides for the annual compensation of the auditor, who is ex-officio secretary of the county council.

**COUNTY COUNCIL—SUPPLIES FOR COUNTY.**

(Acts 1899, p. 343, Sec. 5952.)

**206. Who may contract for county supplies.** The Board, or someone authorized by it, only, has the power to contract and procure supplies for the county; and only payment for such supplies thus procured shall be made by the Board.

(Acts 1899, p. 343, Sec. 5953.)

**207. Supplies—Contracts to furnish—Specifications.** The Board of Commissioners, having the exclusive power to purchase materials and supplies of any and every sort, which are to be paid for out of the county treasury, shall purchase such supplies or materials only upon the written requisition of the officer or employe for whom or for whose work such supplies or materials are deemed necessary. The form of such requisition shall be prepared by the auditor and approved by the Board of Commissioners, and printed blanks furnished to the various county officials and employes entitled to make such requisitions. The same shall be described with reasonable particularity, the kind and quality of all supplies or materials, the purpose for which they are needed and the place where they are to be used. It shall be the duty of all officers and employes of the county who need any supplies or materials to be paid for out of the county treasury, to present to the Board of Commissioners on or before the first day of September in each year their written requisition, as hereinbefore provided, for all materials and supplies required by them, and each of them, divided under appropriate headings, properly classifying the same as hereinafter provided, for the ensuing calendar year. It shall be the duty of the Board of Commissioners having required and received such requisitions from each officer or employe of the county entitled to make the same, to prepare full and definite specifications on or before the first Tuesday after the first Monday of October of each year, of the kind and quality of supplies needed for the county for the ensuing calendar year. Drawings, models or blanks shall be prepared when needful to make definite any specifications. In preparing such specifications, the Board of Commissioners may reduce the items of any requisition submitted to them as they may think proper, but said commissioners may not purchase, contract for nor procure any materials or supplies not called for in such requisitions on file with them except as hereinafter provided. After the preparation of such specifications of materials and supplies to be required for the ensuing year, the same shall be placed on file and kept in the auditor's office, where they shall be open to public inspection. The commissioners shall cause a brief notice to be published one time in each of two leading newspapers of general circulation published in the county, if there be such, representing the two political parties casting the highest number of votes in such county at the last preceding general election, in the month of December of each year, informing the public of the general nature of the supplies and materials required by the county and of the fact that specifications for the same are on file in the auditor's office, and calling for sealed proposals for such supplies by a day stated in said publication, and not earlier than ten days after such publication. No bids shall be received for any materials or supplies differing from the exact specifications prepared and filed as hereinbefore required. Said Board shall, after a satisfactory bid is received let a contract to the lowest and best responsible bidder for each line or class of supplies or materials required. One line or class shall consist of blank books, records and special ruled blanks, and similar ma-

terials; another class shall consist of blanks requiring two or more impressions of press work and similar materials; another of legal cap, stationery, tablets, pens, ink and pencils and similar materials; another of letter heads, envelopes, printed stationery and such blanks as can be printed and ruled at a single impression, and similar materials. The purpose of such classification being to secure the freest competition and the lowest prices from dealers: Provided, That they may reject any and all bids and readvertise for new bids. Bids shall be submitted separately, and contracts shall be let separately upon each line or class of materials or supplies. In every case, the contract so let shall fix not only the price but the exact amount or quantity to be furnished, except that in case of contracts for meats, groceries, dry goods, fuel and house furnishings required for the subsistence of inmates of county institutions, and blank books, blanks and stationery for the use of the county, the Board shall let contracts for such articles at stated prices, leaving the amount or quantity to be furnished to vary with the needs of the county. All such contracts for materials or supplies required for the ensuing calendar year shall be made for the entire year for the particular line or class of articles or materials embraced in the contract. And the Board of Commissioners shall in case any additional supplies are needed for the transaction of the public business of the various county officers and not mentioned in the requisition as hereinbefore provided cause the same to be purchased of a contractor at the price of like supplies mentioned in the contract. And it is declared to be unlawful to make partial contracts for a portion of the year's supplies, except that county asylum, poor farm and workhouse supplies may be contracted for quarterly instead of annually. All contracts let in violation of the provisions of this act are hereby declared illegal and void.

**207a.****WEED LAW.**

(Acts 1915, p. 622, Repealing Secs. 7807-08-09.)

It is the duty of landowners, through or along whose lands free gravel or macadam highways run, to cut and destroy between June 15th and September 1st of each year, all the briars, thistles, burrs, docks, willows, sumac, reeds, cattails, tall grass, shrubs and all other growths which in any manner obstructs the view of such highway, along through or contiguous to such owner's lands.

The landowner who cuts and destroys such growths in the county roads along his lands, shall do such work under the supervision of the county highway superintendent and shall be allowed and paid for such work out of the gravel road fund at the rate of \$1.50 per day of eight hours, and a proportionate sum for each fraction of a day, for the time necessarily occupied thereat, and a special weed tax for the payment of the same shall be collected and paid in the same manner as hereinbefore provided for special weed taxes.

Any person who violates this law is liable to a fine of not less than \$5.00 nor more than \$10.00 for each separate offense.



**COUNTY COUNCIL—TAXATION.**

(Acts 1899, p. 343, Sec. 5932.)

**208. Council's power to fix uniform taxation—Appropriations.** The power of fixing the rate of taxation for county purposes, and for all purposes where the rate fixed by law is required to be uniform throughout the county, shall be vested exclusively in the county council; and neither the Board, nor any county officer or officers, shall have the power to fix the rate for any such purposes whatever.

The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and except as in this act otherwise expressly provided, no money shall be drawn from such treasury, but in pursuance of appropriations so made.

**Note:** For exceptions to this rule, see Secs. 163, 165, 166, 259 and 370 this book.

The rule does not apply to gravel road fund and similar funds.

**FREE GRAVEL ROADS.**

(Acts 1913, p. 877, Sec. 7754.)

**209a. New free gravel road repair law, 1913.** The general assembly of 1913 repealed the act of 1905 and its amendments, where the Board constituted, ex-officio, the board of directors for free gravel roads, and enacted a law providing for a county highway superintendent. The act of 1913, at page 878, provides for the appointment of that officer by the Board at their January session in 1914, and biennially thereafter, who shall hold his office for two years and until his successor is appointed and qualified.

In counties having less than 200 miles of free gravel roads the county surveyor is eligible to be appointed as such county highway superintendent.

In counties having more than 200 miles of free gravel roads, Boards shall appoint such superintendent at the meeting as above mentioned, who shall be a resident voter of the county.

After a hearing such superintendent may be removed, by the Board, for incompetency, malfeasance, or neglect of duties. The superintendent is required to execute and file an official bond, subject to the approval of the Board, in the penal sum of \$5,000 for the faithful performance of his duties. Any vacancies occurring in such office shall be filled by the Board. His per diem shall be \$5 per day in counties having 400 miles or more of such free gravel roads; in counties containing fewer than 400 miles, his compensation shall be \$4 per day. Such compensation shall be paid for the time actually employed as such superintendent and from the free gravel road fund.

**Note:** In counties having less than 200 miles of improved highways, the discretion is in the Board as to whether or not it will appoint the county surveyor or highway superintendent, or whether or not it will appoint some one else. *State, ex rel. Bateman v. Hart* (Ind. Sup. Ct.), 105 N. E. Rep. 149.

The county highway superintendent shall have general supervision of the maintenance and repair of all highways, bridges and culverts



obtaining to the free gravel road repair fund. He is limited to the expenditure of \$50 for the repair of a bridge or culvert, without the approval of the Board. When an expenditure for any bridge or culvert exceeds \$100, the same shall be made as heretofore provided by law.

Such superintendent is required annually, on or before the first day of September to make a complete itemized estimate of the cost of the maintenance of his office, and an estimate of the cost of repair of highways, bridges and culverts, to be repaired in the county under his supervision, during the next ensuing year, and shall file such estimate with the auditor for the use of the Board in reckoning their levy for a proper tax to pay the expense of such highway repairs.

The act provides that the levy made by Boards of 1913, shall apply and constitute the fund to be used by such superintendent in the year 1914.

The superintendent shall file an itemized monthly report of all work done by him, with the Board, and on the first Monday in January, in each year, a report of the work of his office, and a full and complete itemized statement of all moneys expended under his supervision during the preceding year.

He shall meet with the Board at its regular monthly session and advise the Board on matters pertaining to the maintenance of roads under his supervision.

The Board has power to contract in the manner provided by law for the purchase of all road and bridge repair material, and all tools and machinery necessary for the proper repair of roads.

It becomes the duty of such superintendent to divide the total mileage and to appoint assistant superintendents whose number shall not exceed four to each 100 miles of road, or fraction thereof. The assistant superintendents shall be under the direction and supervision of the county highway superintendent, at all times, and be subject to removal by him, for cause. They each shall execute and file a bond in the penal sum of \$1,000 to the approval of the Board for the faithful performance of duty.

Each assistant superintendent is required to file with the county superintendent on or before the 22d day of each month an itemized statement of all work done by him and under his supervision. This shall include names of parties who performed the work; dates when work was done; nature of work done; upon what road or roads; if new material was used, either stone or gravel; repair of bridges or culverts, and cost of such material, such report to be sworn to before some person qualified to administer oaths.

This report when made and approved by the county highway superintendent, and filed before the auditor, becomes a claim against the county, and when allowed by the Board shall be paid from the free gravel road repair fund to such assistant road superintendent as required by law.

The act gives power to the assistant superintendent, if necessary, to employ teams and men to assist in the repair work, and limits the rate of wages: teams and driver, 35 cents per hour; laborers, 25 cents per

hour; services of assistant superintendent, 25 cents per hour for time actually employed; the use of his team, 15 cents per hour; the use of his second team, when inconvenient to obtain other teams, with driver, not to exceed 35 cents per hour.

The act further provides that in counties containing a first or second class city, the Board, together with the county highway superintendent, shall determine the rate of wages to be paid for labor and teams.

Section 7 of the act provides for the confiscation of the necessary material, and for drainage, upon the verified petition of the county highway superintendent or the assistant superintendents, to the Board.

An annual tax levy, not to exceed one cent on each \$100 for every ten miles of free gravel road completed within the county, shall be made by the Board, the same to constitute a gravel road fund.

**209aa.****LEGALIZING ACT OF 1915.**

(Acts 1915, p. 606.)

This act purports to legalize invalid overdrafts, indebtedness and bond issues made against the free gravel road repair fund, in certain counties, and provides for the issuance of bonds to pay such indebtedness, and for a levy of taxes to pay such bonds.

This act being of local importance, only, reference is made to the act.

**COUNTY SEATS.**

(Acts 1 R. S. 1852, p. 224, Sec. 6000.)

**209b. Collection of delinquent purchase money.** In all cases where lands have been granted to the Board for the purpose of a county seat, and town lots have been sold therefrom, and the purchase money or any installment is due and unpaid, the only proceedings necessary to recover possession or to enforce their payment, shall be instituted in the corporate name of the Board.

**COUNTY SEATS—LOCATION.**

**209c. Acts concerning relocation.** The three acts concerning the relocation of county seats, viz.:

Act 1885, page 221 (See Burns 5849 to 5858 inc.)

Act 1889, page 297 (See Burns 5859 to 5868 inc.)

Act 1895, page 217 (See Burns 5869 to 5892 inc.)

are omitted from this book, as it is believed that they are not of general interest.

**COURT HOUSE, SALE OF.**

(Acts 1913, p. 545.)

**210. The Marion County act to sell.** By an act approved March 12, 1913, the Board of Commissioners of counties having a population of 150,000 (Marion county) according to the last preceding U. S. census, was given power, and vested with full authority to sell and convey in fee simple by good and sufficient deed any court house site or squares

or parts of them heretofore dedicated by the state for court house purposes. The act provides for an election, petition and valuation, and will be found in the acts of 1913 at pages 545 to 550, inclusive.

### DAMS ACROSS STREAMS.

(Acts 1861, p. 105, Sec. 5576.)

**211a. Slack-water navigation.** Any number of persons, not less than ten, may incorporate for the purpose of building dams across streams so as to afford slack-water navigation.

(Section 5587.)

**211b. Procuring Board's consent.** The company when fully complying with the provisions of the act must first procure an order of the Board to allow it to proceed with any dam construction; and shall pay all damages to mill owners, if any along such stream, and to landowners and inhabitants along such stream, if there have been any damages assessed.

### DAMS OR DRAINS.

(Acts 1905, p. 584, Sec. 2318.)

**212. Penalty for injury to highway protection.** Whoever injures any dam, drain, embankment, ditch or other construction made in pursuance of law, or made for the protection of any highway, railroad or bridge, or wilfully destroys or throws down any milepost, guide post, or alters or effaces any inscription or device thereon, is subject, on conviction, to a fine not exceeding \$50, and an imprisonment not exceeding 10 days may be added.

### DEATH PENALTY.

(Acts 1913, p. 844, Sec. 2196.)

**213a. Punishment by death.** By the act of 1913, page 844, the punishment by death by hanging, as prescribed by law, by the warden of the Indiana state prison was amended so that the execution shall be inflicted by electrocution.

(Acts 1905, p. 584, Sec. 2205.)

**213b. Warden's fee for electrocution.** The warden conducting the execution shall be allowed the sum of \$50 out of the county treasury in which judgment of execution was rendered, upon the return of the death warrant, to the clerk of the circuit court, with execution of sentence indorsed thereon.

### DEPOSITIONS.

(Acts 1881 S. p. 240, Sec. 439.)

**214. Privileges to county officer.** The attendance as a witness, in a trial outside of his county, cannot be enforced on a county officer. His deposition may be taken.

**Note:** This section does not apply to criminal cases.

**DETECTIVE.**

(Acts 1907, p. 230, Sec. 4164.)

**215. Horse-thief detective association.** Any number of persons, citizens of the state, ten or more, may organize themselves for the purpose of detecting and apprehending horse thieves and other felons, and incorporate as a voluntary association. They may elect officers, adopt a constitution and by-laws and add to their numbers.

Upon the application, with names of members designated, the Board may grant the powers of constables to such. The records of the Board will give the auditor authority to issue a certificate of such appointment. (Burns R. S. Sec. 4171.)

**DISCOUNTING COUNTY OBLIGATION.**

(Acts 1905, p. 584, Sec. 2421.)

**216. Penalty for discounting county's paper.** Any county officer purchasing, or receiving in payment, any demand against the county for less than the face value of such demand shall be fined from \$10 to \$500.

**DIVISION OF QUESTION.**

(Acts 1 R. S. 1852, p. 224, Sec. 5981.)

**217. Two members only present—Division.** When only two of the members shall attend the meeting of the Board, and a division shall take place on any question, it shall be continued until the next meeting before it shall be finally determined.

The courts have in many cases decided that after final action in a matter, county Boards can not set aside or rescind the proceedings.

**DRAINAGE—CIRCUIT COURT.**

(Acts 1907, p. 508, Sec. 6140.)

**218a. Board appoints drainage commissioner—Surveyor—Bond.** At the first regular session of January of the Board biennially, the Board shall appoint a drainage commissioner, who shall be a person of intelligence, good judgment and a citizen of the county. He shall hold his office for a term of two years and until his successor shall be appointed and qualified unless sooner removed by the Board. The Board may remove at any time and fill vacancy at any meeting.

His official bond is \$5,000, to be approved by the auditor.

The county surveyor is, ex-officio, a drainage commissioner and is associated in drainage work with such appointee.

Under an amendment, Acts 1913, p. 70, the surveyor is required to give bond for not less than \$5,000, covering all official duties.

(Acts 1909, p. 431, Sec. 6145.)

**218b. Issuance of county bonds—When extending into adjoining county.** Whenever the total cost of the construction of a ditch is \$5,000, or more, and the issuance of bonds for payment of construction of such is desired, the Board takes jurisdiction.



The drainage commissioner, in charge of the work having let all contracts for construction of the ditch and having determined its total cost including all incidental costs, and having apportioned this total cost to the respective parcels of land shall certify such assessments and apportionment to the Board. At the next meeting of the Board it shall determine at what time and in what number of installments that payment should be made, which shall not extend over a period of ten years, with annual intervals after the first year. The Board shall record its determination together with its acceptance of the assessments and the apportionment, and fix a day, not less than 90 days thereafter, by which time the owners of such benefited land may pay their assessments for such construction, as a right, in full.

The auditor, when such order is made, shall thereupon give newspaper notice of the placing of the assessments in the hands of the treasurer and of the right of such beneficiaries to discharge their lands from the liability on or before the date fixed by the Board. The treasurer having made such voluntary collections at the date fixed, and having placed the receipts in a county depository, reports all collections to the Board. The Board being in session, after deducting the amount of the assessments reported paid by the treasurer, from the total estimated cost of construction and other incidental costs, shall cause bonds of the county to be issued, in denominations of not less than \$100 each, for the remainder. Such bonds shall be numbered consecutively, beginning with the first maturing. Such bonds shall bear five per cent. interest per annum, payable semi-annually; they shall also show on their face the purpose of their issue, and shall be paid from such assessments and not otherwise.

The auditor shall prepare a "ditch duplicate", for recording all such assessments, and thereon extend the same for the full amount of the payments and adding interest on each successive installment at the rate of six per cent., and such assessments shall be a paramount lien on such lands.

Such assessments shall be paid as other taxes are.

Upon the issuance of the bonds, the auditor shall give newspaper notice of their offer of sale by the county treasurer, at least 20 days prior thereto, to the highest and best bidder. At the time and place fixed in the auditor's notice he and the treasurer shall attend such sale, and shall sell to the highest and best bidder for cash, but in no event shall the bonds be sold for less than their face value, nor shall the treasurer or auditor receive any fee or compensation for their services in making such sale.

The proceeds of sale of such bonds shall be paid into the treasury, and shall only be paid out for construction of the ditch and its incidental expenses, upon the order of the ditch commissioner, approved by the circuit court, in which the proceedings were had.

All costs advanced by the Board shall be refunded from such proceeds. Any premium paid for the bonds shall be applied as part payment of the first maturing installment, and shall be apportioned pro rata.

In case a ditch extends into more than one county, the several counties shall pay amount collected to treasurer of the county having original jurisdiction of the proceedings.

### **DRAINAGE, ON STATE LINES.**

(Acts 1907, p. 508, Sec. 6149.)

**219. When ditch is on state line.** In case that a change, widening, deepening, straightening or the construction of a ditch at or across the line between the State of Indiana and an adjoining state, affects the lands in both states, the Boards of this state are empowered to join with the proper authorities of the adjoining state in such work, by contract, such contract to be paid by each in such proportion as may be deemed just.

Such work shall be done by petition, and jointly, as mentioned, provided the adjoining counties in the other state shall pay their proper share of necessary costs and expenses.

### **DRAINAGE—COUNTY COMMISSIONERS.**

(Acts 1907, p. 508, Sec. 6151.)

**220. Preliminary proceedings—Grievance.** When any work of drainage is proposed, within one county, the petitioners may apply to the Board, instead of the circuit court at any regular session. The preliminary processes are similar in all particulars, as to hearing, demurrer, pleadings, dismissal or amendment as when application is filed with the circuit court.

Appeal may lie to the circuit court on the report of the drainage commissioners, within the proper time.

The reports of the drainage commissioners shall be prima facie evidence of the facts therein contained, in either court. The county auditor performs the duties provided for the clerk in the circuit court, so far as applicable. The Board hears all pleadings at its next term.

It is provided that when it shall appear that the proposed drainage, with its branches, will not exceed two miles in length, and will not cost to exceed \$300, excluding the tile therefor, and when the county surveyor is not interested, nor related to the parties likely to be affected by such ditch, the auditor may refer the same at once to him, to investigate and report within 30 days to the auditor. The surveyor, herein has the powers and duties granted to engineers, drainage commissioners and viewers in such proceedings.

Upon the filing of the surveyor's report, the auditor shall issue a notice to each landowner—

1. A general description of the ditch.
2. Names of landowners named therein.
3. A general description of such owner's land and amount assessed for benefits and damages.
4. The day when the same will be heard by the Board which shall be the next ditch day, provided that it is not less than 15 days after such report is filed with the auditor.

The petitioner has the right to serve such notices, provided he calls for same within three days after filing of surveyor's report, otherwise it becomes the duty of the sheriff to serve them, the cost thereof to be taxed to the petitioner.

Upon day set for hearing, all parties having had a ten days' notice, the Board proceeds to hear the cause. The Board in such hearing has the same powers as the circuit court, and observes same rules as to pleadings and amendments, and can change plan of the proposed work, and modify the assessments for benefits and damages. Objections by owners can be filed, and when aggrieved they have the right to appeal to the circuit court from the judgment of the Board.

The burden of the proof lies with the remonstrant and the report of the surveyor shall be evidence of the facts therein stated.

A continuance of the cause shall be had until it appears to the Board that all interested parties have had proper notice; non-residents to be notified by the auditor in same manner as non-residents are notified in other civil cases.

The construction and repairs of such ditch shall be made in same manner, as other ditches are made, as per act made and provided.

## **220a. DRAINAGE DISTRICTS—BRIDGES OVER DRAINS.**

(Acts 1915, p. 245.)

Sec. 34 of the Ballou drainage act of 1915, provides that the proper county, township or other corporation, shall build or enlarge, where necessary, bridges over the drains to be constructed under the drainage act, upon the order of the board of supervisors of the drainage district. The act provides that the secretary of the board of supervisors shall give notice to the proper county or township by delivering to the auditor or trustee of such county or township, the order of the board of supervisors, of the drainage district, declaring the necessity for the construction or enlargement of such bridge. Such bridge must be constructed within ten days after the drainage ditch shall be completed across the public highway.

**Note:** The question as to the validity of the provision that the drainage district officers may compel counties or townships to build or reconstruct bridges, will no doubt be determined by the courts.—The Editor.

## **ELECTIONS—PRIMARY.**

(Acts 1915, p. 359.)

**221a. Election precincts—Regular.** Election precincts shall be the same for county primary elections under this act as for general elections, and for city primaries the same as for municipal elections. The county commissioners or city council, as the case may be, shall give ten (10) days' notice of the place of voting in the several primary precincts, by two publications in one paper each of the two leading political parties of the county or city and if it should be necessary to change any of the places of voting at said primary election after the

giving of such notice, then notice shall be given by like publication, of such change, but no change shall be made within two (2) days before the holding of such primary. Voting booths in sufficient numbers to accommodate voters of each precinct shall be furnished and used in the same manner as now provided under the general election laws of this state. Separate ballot boxes of colors corresponding with the color of the ballot shall be furnished for each political party participating in such primary. No primary election shall be held in a room or adjoining any room in which spirituous, vinous, malt, or other intoxicating liquors are sold or kept for sale. The provisions of the general election laws now or hereafter in force relating to the right of any employe to have sufficient time to attend the polls and vote shall apply to all primary elections held under this act.

**221b. Publications required.** Every publication required in this act shall be made in two newspapers of general circulation in such county. One of such newspapers shall represent the political party that cast the largest vote in such county or city at the preceding general election, and one of such papers shall represent the political party that cast the next largest vote in such county or city at the preceding election and if no such paper, then in a paper designated by the chairman of such party. In any case where the publication of a notice cannot be made as hereinbefore required, it may be made in any paper having a general circulation in the county in which the notice is required to be published.

**222. Per diem of election officials.** Each inspector, judge, clerk and sheriff of any primary election shall be allowed and paid three dollars (\$3.00) for each day's service while attending to such election and performing the duties of his office.

**223. County furnishes supplies.** All ballots, blanks and other supplies to be used at such primary and all expenses necessarily incurred in the preparation for or conducting such primary shall be paid out of the county treasury, in the same manner, with like effect, and by the same officers, as in case of general elections.

**224. Voting machines.** If in any county or city voting machines shall have been adopted under the laws of this state, and shall be on hand for use at the general or city election, such machines may, by the order of county commissioners, or ordinance of the city council, be adopted whenever practicable for use at the primary election in such county or city and used. When so adopted all provisions of the laws of this state providing for or applying to their use at elections not inconsistent with the provisions of this act, and all provisions of this act as far as applicable, shall apply to the use of such voting machines at such primary elections.

(Acts 1907, p. 627, Sec. 7109.)

**224a. When voting machines are used.** In counties that have adopted and procured voting machines, such shall be used at primary elections, either on the order of the Board or the city council.



**ELECTIONS, REGISTRATION OF VOTERS.**

(Acts 1913, p. 528, Sec. 6977b-y.)

**225a. When Board fixes voting precincts—Inspectors—Expenses.** The "Van Auken-Storen Registration Act" provides that whatever order the Board shall make changing precinct in any year of a general November election, shall be made not later than the March session of the Board, which shall thus remain throughout the year as fixed at such time.

For the purpose of registering the legal voters of the county, at the regular August session preceding such general election, the Board shall appoint a registration inspector for each election precinct of the county. Such inspector shall, at the time of his appointment, be a voter and resident freeholder in the township in which the precinct is situated, and continuously for at least a year immediately prior thereto; or a resident householder and voter of such precinct who for at least two years continuously resided therein immediately prior thereto.

The auditor shall notify such inspector of the appointment, and within ten days he is required to qualify to such office, which oath shall be in writing and shall be filed in the auditor's office. In case such appointee should fail to qualify within such ten days, his office shall be deemed as vacant, and such vacancy shall be filled by appointment of the auditor.

Two registration clerks of the precinct shall be appointed by the inspector of such precinct, to be nominated by the county chairman of each of the two political parties casting the largest vote in the county at last preceding election.

(Acts 1915, p. 530.)

**225b. Registration places—Notice.** The county commissioners of each county in the state shall, at least fifteen (15) days before the session of the board of registration provide for and secure in each precinct of the county, a suitable room in which the Board shall sit during its session, and, if practicable, they shall secure the same room in which the election is to be held. The room shall not be one in which spirituous, vinous, malt or other intoxicating liquors are kept or sold.

**225c. Compensation of Officials.** The inspector of registration shall receive for his services in and about said registration performed including the services required to be performed by him, both before and after the day or days of registration, the sum of three dollars (\$3.00) and in addition thereto he shall be paid the sum of two dollars (\$2.00) for the day on which he procures the registration books, blanks and other stationery from the county auditor, and a like sum for the day on which he returns such books, together with a sum equal to five cents per mile for each mile of the shortest distance between his residence and the auditor's office, but such inspector shall be entitled to such per diem as aforesaid for procuring and returning such registration books, only in the event that he actually performs such services in person. The clerks of such Board shall receive for all services performed by them the sum of three dollars (\$3.00): Provided, That if such Board

of registration is in session for the purpose of registration, an additional day then each member of said Board shall receive an additional three dollars (\$3.00) for such additional day.

### ELECTIONS, AUSTRALIAN BALLOT.

(Acts 1907, p. 659, Sec. 6882.)

**226. Preliminary duties of Board—Precincts—Inspectors.** It is the duty of Boards to divide the townships into voting precincts, and establish the boundaries of the same. The Board shall designate at least one place of holding elections in each precinct, and every township in which there is only one place of holding an election, shall constitute a precinct. Each precinct shall contain, as nearly as practicable, 250 electors, but no precinct shall contain more than 250 electors.

If at any election more than 250 votes should be cast at any voting place, it becomes the duty of the inspector to report this to the Board which shall, at its next regular meeting, divide the precincts so that there shall be 250 votes, as nearly as practicable, and the Board shall report such action to the clerk of the circuit court and to the governor, showing the estimated number of electors contained in the new precincts.

Upon the petition of 25 electors of a township with a single voting precinct, where there were 200 votes cast at the last presidential election, addressed to the Board, representing that it will be a public convenience and for the public good to change, divide or consolidate such precinct, the Board being convinced shall grant the petitioners' prayer, and report such alteration to the clerk of the circuit court as well as the governor, together with the estimated votes of each of the new precincts.

A writ of mandamus will apply to the Board, by any qualified voter of the county, to compel the performance of this duty.

The provisions of this act do not apply to any county where "voting machines" are used.

**Note:** The act of 1913 requires this order to be made not later than the March session in years of a general election.

(Acts 1915, p. 135.)

**226a. Voting precincts—county commissioners designate.** In any township in which there is only one precinct, and in which there are one or more incorporated towns the Board of County Commissioners shall designate the polling place at some convenient place in that incorporated town in the township which had the largest population according to the last preceding United States census.

(Acts 1891, p. 124, Sec. 6883.)

**227. How changes are to be made.** The Board may at the proper time change the boundaries of any precinct within the county, or divide any precinct into two or more precincts, or consolidate two precincts into one, or change its voting place whenever public convenience or the public good may require it. Publication for one month by one

insertion in two newspapers representing two political parties is necessary to validate such alteration. Any enlarged precinct shall not contain more than 250 electors.

**Note:** This act must be construed with the registration act of 1913, at page 528, Burns R. S. Sec. 6977a-y. See Sec. 225 of this book.

(Acts 1901, p. 437, Sec. 6885.)

**228. September meeting—Duties of Board.** At the September term, next preceding an election, the Board shall appoint in the precincts, in which a township trustee does not reside, an inspector for such election. He shall have been a freeholder and resident householder for at least one year next preceding such election, or a resident householder for at least two years. In the event that no person is qualified or will consent to serve, the Board shall then appoint some qualified elector of the precinct as inspector.

The Board shall hold a special session one week before each election, and shall fill any vacancy that may have occurred in the office of inspector.

The inspector before time of opening the election shall appoint two judges, if not already appointed, and such judges and inspector shall constitute the Board of election for such precinct. The act embraces other conditions which do not obtain to the Board of Commissioners.

**Note:** The township trustee is, by virtue of his office, inspector in the precinct in which he resides.

(Acts 1889, p. 157, Sec. 6887.)

**229. Auditor to furnish all supplies.** It is the duty of the auditor to furnish all blanks and supplies necessary for use in all elections.

(Acts 1889, p. 187, Sec. 6891.)

**230. Ballot boxes, how constructed.** The Board shall provide at the expense of the county, two differently colored ballot boxes, one of them red for the reception of the ballots prepared by the state board of election commissioners; the second box being white for reception of the ballots prepared by the county Board of election commissioners. Each box is required to have two locks with different fitting keys, and be otherwise constructed as to contribute to the prevention of fraud.

**Note:** The Board shall also provide a ballot box, painted yellow, for use in township elections. See Sec. 6986 Burns R. S.

(Acts 1897, p. 49, Sec. 6922.)

**231. Suitable room—Booths—Railings—Chutes—Restrictions.** The Board shall, before each election, provide for and secure, in each precinct of the county, a suitable room to hold the election, and to have placed therein a railing separating the part of the room to be occupied by the election Board from the other part of the room; and also three booths with shelves in which the electors shall, screened from observation, mark their ballots.

The construction of the booths shall be such that all the members

of the Board may see whether or not more than one voter shall enter a booth at one time.

The Board shall also provide for each precinct a chute, with a railing, rope or wire on each side commencing 50 feet away from and leading to such voting place and passing the challenger's window.

The expenses of such preparation shall be defrayed by the Board.

No election shall be held in a room where intoxicating liquors are kept or sold.

(Acts 1881 S. p. 42, Sec. 6952.)

**232. Meals for election officers.** It becomes the duty of the township trustee, in his township to furnish the election boards with good, plain, substantial meals, at regular hours, during the election day, and until the count is finished, but no spirituous, vinous or fermented liquors shall be furnished. Such trustees shall be allowed and paid by the Board the actual cost of such meals, in its next regular account.

**Note:** Boards cannot allow a claim to a trustee for meals which the trustee himself has furnished.

### ELECTIONS—VOTING MACHINES.

(Acts 1903, p. 278, Sec. 7024.)

**233. When Boards must purchase voting machines—Precincts.** The amendment of 1903, p. 278, makes it compulsory for the Boards of counties containing a city with population of 36,000 or more to adopt, purchase or procure voting machines for use in all elections. In all other counties the Board may in its discretion adopt and purchase them.

Section 3 of the act 1901, at page 591, gives in detail the requirements of the machine and the workings it must perform to insure accuracy and secrecy in its manipulation.

The restrictions of the Board, in adopting and purchasing voting machines, require a five-year written guarantee with a bond conditioned that the seller will keep such machines in working order, for such time, without expense to the county; also that the Board must be satisfied the adopted machine complies with the requirements of Section 3 of the act, and that it is thoroughly reliable and correct in its operation, readily understood and operated, can not be fraudulently operated and will unquestionably maintain the secrecy of the ballot.

When it is impossible to purchase machines for all the precincts, the Board may purchase for a part of them, as many as possible, and designate the precincts where the machines shall be used.

The precincts in which the voting machines are used shall contain as near 600 voters, as practicable, which in country precincts, may, at the discretion of the Board be reduced.

The Board shall at the proper session change precincts to conform to the requirements of this act. At the same session the Board shall designate the precincts where the machines are to be used, and establish their boundaries. Not until after such election can such order be rescinded, relative to boundaries, which were adopted at that session.



In the event that it becomes impossible to obtain machines for use in such designated precincts, then the precincts may be provided or changed to conform with the law with reference to those where machines are not used, and the notice of such division shall be made in manner prescribed by law for changes in precincts.

The Board shall have the care and custody of all voting machines while not in use.

**Note:** See Burns R. S. Sec. 6977b, Sec. 225, this book, for time for fixing precinct boundaries.

(Acts 1903, p. 278, Sec. 7025.)

**234. How voting machines may be paid for.** The amended act also provides for payment by the Board for any voting machines purchased or procured, in any manner deemed best for the interests of the county. Money may be borrowed for the purpose, and bonds or other evidences of indebtedness of the county may be issued, and sold in same manner and upon the authority prescribed by law.

(Acts 1903, p. 278, Sec. 7026.)

**235. Penalty for bribery at election.** Any member of any Board, who shall receive or accept directly or indirectly, any money, property or thing of value for his influence, vote or action in connection with the purchase of a voting machine by such county from any one, shall be fined in a sum not over \$3,000, to which may be added imprisonment in the state prison for a term of 2 to 4 years and disfranchised for a period of 10 years.

### ELECTIONS—CONTESTS.

(Acts 1881, S. p. 482, Sec. 7010.)

**236. How contestants are to be heard.** All contests for county and township elections shall be tried by the Board.

Whenever any elector shall choose to contest such election, he shall file a written statement specifying grounds of contest, verified by his affidavit, with the auditor, within 10 days after the person has been declared elected. In the event that there is a contest for the office of auditor, such statement shall be filed with the clerk of the circuit court.

(Acts 1881, S. p. 482, Sec. 7012.)

**237. Duties of auditor, in contested election.** When such statement has been filed with the auditor, he shall issue his notice to the Board to meet at the court house at a designated time, not less than ten nor more than twenty days to try such contested case. Within five days thereafter he shall likewise issue notice of time and place set for the hearing, which shall be served on contestee by copy, by the sheriff.

(Acts 1881, S. p. 482, Sec. 7013.)

**238. Duties of Board, in contested election.** The Board shall try and determine such contest, having power to compel the attendance of witnesses; to examine them; to punish contempts; to adjourn, or continue the trial from time to time, not exceeding 20 days, all told.

All subpoenas are to be issued by the auditor and to be served by the sheriff. The rules of the circuit court shall govern such trial, and the finding of the Board shall be certified to the proper officer. The judgment of the Board shall fix and tax the costs of such trial.

### EXAMINATIONS.

(Acts 1897, p. 187, Sec. 5986.)

**239. Monthly examinations by board.** The Board is required at the first of each regular session to examine and audit the books of both the auditor and treasurer, covering the comparison of the allowances with their respective stubs or register, made at its last session. The Board shall also examine all warrants redeemed by the county treasurer turned over to the auditor by him for credit, and to see that all such warrants are properly canceled so that they can not be again put into circulation; and further to see that the accounting between the two officers is proper.

### FEE BILLS.

(Acts 1865 S. p. 182, Sec. 6099.)

**240. When auditor shall issue.** When costs adjudged against any party remain unpaid, upon orders of the Board, or by any interested party, the auditor shall issue a fee bill directed to the sheriff to enforce the collection of such costs, and be governed in all respects by the regulation for fee bills issued by the clerk of the circuit court.

### FEES AND SALARIES.

(Acts 1899, p. 543, Sec. 6100.)

**241. "Fees and Salaries, 1913."** For salaries of county commissioners see "Fees and Salaries, 1913", Sec. 517.

(Section 6101.)

**242. Extra pay to board, forbidden.** It is unlawful for any county commissioner to receive, in any way, any compensation in addition to his salary; or to make, or join in making, any allowance to himself or to another member of the Board, for any service or expense rendered by him or them, in any way, or to make to himself or to any member of the Board, any allowance for any service other than as commissioner.

(Section 6103.)

**243. Board's salary payable quarterly.** Salaries of commissioners are made payable quarterly.

(Section 6102.)

**244. Penalty for other allowances.** Any member of the Board making such an allowance or receiving any money or article of value or compensation in violation of law shall be guilty of a misdemeanor, and upon conviction be fined from \$50 to \$1,000, to which may be added imprisonment and disfranchisement for a determinate period.

(Acts 1895, p. 319, Sec. 7350.)

**245. Examination by Board of officers' claims.** The Boards, together with their attorney, shall have full power, and it is made their duty, at their sessions, to inspect and examine all records, fee books and papers of officers who collect fees for services rendered, for the purpose of comparing such accounts, for their bills rendered.

A refusal or failure to deliver such fee book to the Board by an officer subjects him to fine of \$100.

(Acts 1883, p. 48, Sec. 7361.)

**246. When allowances forbidden.** It shall be unlawful for any Board to allow any county, township or other public officer any sum out of the county treasury, except on unequivocal authority, so to do, as conferred by a statute.

(Acts 1863, p. 43, Sec. 9606.)

**247. Advance allowance forbidden.** No law of the state regulating the salaries of public officers shall be so construed as to permit an officer to draw or receive his salary in advance.

(Acts 1913, p. 376, Sec. 7341.)

**248. Special session in December.** Boards are required to meet in special session on the last business day in December in each year for the purpose of providing for the payment of the claims for salary, for which appropriations have been made, of the clerk of the circuit court, auditor, treasurer, sheriff and recorder.

## FENCES.

(Acts 1 R. S. 1852, p. 292, Sec. 7363.)

**249. Definition of a lawful fence.** A lawful fence is defined as any structure, hedge or ditch, in the nature of a fence, used for the purpose of an inclosure, which is such as good husbandmen generally keep, and as shall, on the testimony of skillful men, appear to be sufficient.

For definition of a partition fence, see Acts 1915, page 638; amending Sec. 7379 Burns R. S.

## FENCES ON OVERFLOWED LANDS.

(Acts 1875, p. 104, Sec. 7389.)

**250a. Consent of Board—Appointment of viewers.** Whenever a majority of owners of improved and cultivated lands, situated on a stream, water course, lake, pond or marsh subject to overflow, shall petition the Board for permission to enclose such lands under one general fence, with swinging gates upon its highways, the Board shall appoint three viewers, to inspect the premises and make an assessment against the owners for such improvement, to be apportioned as to the number of acres of each owner of improved land.

(Acts 1875, p. 104, Sec. 7390.)

**250b. Report of viewers.** Upon the report of the viewers, together with a tabular statement of the assessments made, in the absence of a remonstrance, the Board may issue an order for the erection and maintenance of such fence and gates. If remonstrance is made, the Board may order or refuse to order such erection, at its discretion. If delay is made by reason of a mistake of the viewers, other viewers may be appointed to perform the service and make report.

(Acts 1875, p. 104, Sec. 7391.)

**250c. Duties of auditor.** The certified copy of assessments against the landowners, as made by the viewers, when accepted by the Board, shall be filed with the auditor. After thirty days from the construction of the fence and gates, if assessments are not paid in full, an interested property holder may file his affidavit with the auditor as to the delinquents, when the auditor shall place such delinquency on the tax duplicate to be collected as other taxes are.

(Acts 1875, p. 104, Sec. 7392.)

**250d. Compensation to viewers.** The Board shall fix the compensation of the viewers, which shall be taken as a part of the entire costs, together with the payment of services of a surveyor if needed by the viewers.

(Section 7393.)

**250e. Animals—Restriction.** Animals running at large on such enclosed territory are prohibited from March 15th to December 25th of each year.

#### FENCING ASSOCIATIONS.

(Acts 1877, S. p. 44, Sec. 4237.)

**251a. Procedure in forming.** Any number of persons, not less than five, who may be interested in inclosing under one general fence a sufficiently described territory of land, may associate themselves for such purpose, elect directors and record their articles of association.

(Acts 1877, S. p. 44, Sec. 4241.)

**251b. Petition to Board—Viewers.** The board of directors shall then present its petition signed by the owners of the major portion of the proposed enclosure to the Board. Such territory must be specifically described in the petition, the character of the gates, highways crossed, nature of the improvement, details of its cost, and a prayer for the appointment of viewers. The Board upon proof that the petitioners own a major portion of the improved land in such area shall appoint three disinterested viewers.

(Acts 1877, S. p. 44, Sec. 4242.)

**251c. Duties of viewers—Assessments.** The viewers shall meet at time and place fixed by the Board and proceed to hear and determine any complaints, and to fix the assessments for the proposed construction.



The viewers having completed their apportionment shall submit a written report to the Board together with tabular statement of the assessments made by them. The act provides for the collection of all assessments to be made by the treasurer of the association.

### FERRIES.

(Acts 1911, p. 309, Sec. 7409.)

**252. Procedure before Board—License.** No person, company or corporation shall be permitted to operate a ferry on any stream in, or bounding any county until first having obtained a license from the Board. The Board shall require satisfactory evidence, to be introduced, that proper notice has been given in the township that the ferry is proposed to be operated, by the posting of three notices in three public places therein, or by advertisement, not less than ten days in a newspaper when published in such township.

The Board being satisfied that a ferry is needed at such place, may grant such license to applicant for a term of five years, upon payment of \$2 to \$50 per year, payable in advance, as directed by the Board.

(Acts 1855, p. 117, Sec. 7414.)

**253. Restriction as to other ferries.** Other and additional public ferries may be licensed by the Board upon any stream upon application and proof of proper posting in three public places in the county, thirty days before the meeting of the Board; conditioned however that no ferry be established within one mile, below or above, an established ferry, unless the public convenience requires it.

(Acts 1855, p. 117, Sec. 7415.)

**254. When on stream dividing counties.** When the stream is a boundary line of two counties, owners of lands, on either side of the stream, desiring to maintain a public ferry across said stream, shall apply to the Board of county where such land is situated. The Board may order its establishment, when the auditor shall certify the order to auditor of county on such opposite side, at the expense of the applicant.

Such county may fix the tax for license for such ferry at not more than that fixed by law for one county, one-half of which shall accrue to each county. Private ferries may be maintained on owner's land, where no charge is made.

**Note:** No notice of a publication of the application is mentioned in this act.

### FIRE ESCAPES.

(Acts 1909, p. 302, Sec. 3842.)

**255. Jurisdiction.** The state bureau of inspection has jurisdiction over all public buildings, in the matter of the requirement of a fire-escape on structures of three or more stories.

**FISCAL.**

(Acts 1907, p. 391, Sec. 7527.)

**256. County Board of Finance—Powers and duties.** The Boards in each county shall constitute a county board of finance, without any other compensation than their salaries as such commissioners.

The county auditor is ex-officio secretary of the County Board of Finance, and shall keep a record of the proceedings of the Board. The auditor shall be paid \$50 additional compensation for his services.

In counties in which the county treasurer is ex-officio treasurer of the county seat city, and is ex-officio treasurer of the school city or board of school commissioners of such county seat city, the County Board of Finance shall consist of the Board, the mayor and controller (if any) and the chief executive officer of such school city or such board of school commissioners of such county seat city. The mayor shall preside and shall have a vote in all cases.

The auditor shall, in case of a tie, cast the deciding vote.

The County Board of Finance shall have charge and control of the county funds, and as stated in the foregoing conditions, the funds of the county seat city and the funds of the school city.

(Acts 1907, p. 391, Sec. 7531.)

**257. Designating depository—Duty of treasurer.** The county treasurer shall deposit all moneys of the county in such depositories as are designated by the County Board of Finance.

(Acts 1909, p. 182, Secs. 7532, 7533.)

**258a. How depositories are selected—Securities.** Selection of depositories must be confined to such banks or trust companies as are subject to visitation and examination by the United States comptroller or the auditor of state.

In lieu of personal or surety company bonds, banks or trust companies may deliver to the Board of Finance the bonds of any county of this state, bonds for the improvement of roads, or bonds of the United States, for the full face value, equal to one-half of the maximum amount to be deposited in any bank or trust company, when the value and validity has been determined; and further that such bonds may be deposited in part and personal or surety company bond for the remainder of such maximum amount.

(Acts 1909, p. 437, Sec. 7535.)

**258b. Proposals for public deposits.** Within twenty days before the time set for meeting of the Boards of Finance, its secretary shall by registered mail, invite proposals from each bank or trust company in their respective townships or counties, to receive public funds on deposit.

(Acts 1909, p. 438, Sec. 7536.)

**258c. Who may receive deposits—Interest.** Any bank or trust company subject to examination by state or national authority, having and doing its business within the state is eligible to be a depository of public funds.

It shall, agreeably to the invitation, express its desire to receive on deposit the public funds of the county by filing with the Board of Finance, at time fixed in the invitation of the secretary, its written proposal to receive a maximum sum on deposit, and agree to pay on daily balances the annual rate of 2 per cent.; upon semi-annual time deposits, the annual rate of  $2\frac{1}{2}$  per cent., and upon annual time deposits, the annual rate of 3 per cent.

(Section 7536.)

**258d. Requirements of depository—County fund.** The bonds and securities required under the provisions of the act shall be filed within five days after the award is made to such depository, and before a deposit of public funds is made.

All interest earned on deposits of county funds shall accrete to the county fund. All interest earned on deposits of the school fund shall accrete to tuition revenue.

(Acts 1911, p. 414, Sec. 7724a.)

**259. Exception as to appropriation—Allowance recovery.** Whenever any township has or may vote for the improvement and construction of a free gravel road, under any law of the state; has advertised for bids, and has received no bid within the estimate within two years from such advertisement, it then becomes the duty of the Board to pay from the general fund of the county, without an appropriation being made therefor, the fees due the engineer, surveyor, viewers, election officers, cost of advertising, election supplies and all fees, costs and expenses incurred in the proceedings.

This shall be repaid to the county by an annual levy of a tax by the Board, upon the property of the interested townships, collectible as other taxes are collected within not more than three years.

(Acts 1911, p. 437, Sec. 5901a.)

**260a. Public building—Settlement withheld.** It is the duty of the Board, and other official boards, to withhold payment to the contractor for any public improvement until such contractor has paid to the subcontractor, and laborers employed in such construction, all bills due and owing the same. When a deficiency exists, then such balance shall be prorated.

Such sub-contractor, or laborer, is required to file his claim within thirty days from the completion of the work with the Board.

The Board shall withhold payment of a sufficient amount in the case of disputes until they are settled and until correct amount is determined, when payment shall be made.

(Acts 1911, p. 437, Sec. 6004a.)

**260b. Requirements of subcontractor and laborers.** Section 2, of the act provides that all contracts for public buildings and improvements shall include a clause for the withholding of sufficient amount to cover payment of material, sub-contractors and laborers, conditioned that such claims shall be filed with the Board within 30 days after such labor is performed or the furnishing of such material.

(Acts 1911, p. 413, Sec. 6004a.)

**261. When auditor required to issue warrant for judgment—Appropriation.** The act approved March 4, 1911, repealing all conflicting law, provides: that upon the allowance of any claim against any county by the Board and for the payment of which claim appropriation has been made by the proper authority, the county auditor shall draw his warrant therefor.

Also, that upon the judgment, decree or order of any court of common law jurisdiction within any county in the State of Indiana in any case wherein a county was a party and was duly served with process for the payment and the filing of a certified copy of such judgment with the auditor of such county, and the allowance of such claim by the Board of such county, such auditor shall issue his warrant therefor.

(Acts 1911, p. 337, Sec. 7726a.)

**262. Act 1911—Certain county bonds exempt from taxation.** Under the provisions, and with an emergency clause, of an act approved March 4, 1911, all bonds authorized by any county or township in the state, after such date, for the purpose of building, constructing and paying for the construction of any free gravel, macadamized or other improved roads, shall be exempt from taxation; provided such bonds shall not bear a greater rate of interest than  $4\frac{1}{2}$  per cent. per annum, payable semi-annually.

(Acts 1911, p. 43.)

**263. Legalization of certain county bonds.** All bonds issued and sold prior to February 24, 1911, pursuant to any order of Boards for purpose of providing money for the construction or improvement of any highway under color of any statute, where purchase money was paid and received, were by the act of that date legalized.

(Acts 1913, p. 414, Sec. 7725b.)

**264. County bonds—Sale of—Indianapolis newspaper.** All bonds hereafter (March 8, 1913) authorized by the Board to provide money for the purpose of construction or improvement of any highway, shall be sold by the county treasurer to the highest bidder therefor, but for not less than par, and after a notice of such sale published in a newspaper of general circulation within the county, and in a like newspaper published in Indianapolis.

Such publication is required to be made not less than 10 days prior to such sale.

**265. Legalizing acts of legislature.** Note: A number of laws have been enacted in relation to the legalizing matters of the Free Gravel Road Act, and reference is made to the following:

Acts 1909, at page 333;

Acts 1911, at pages 43 and 642;

Acts 1913, at pages 108 and 484.

These cover elections, contracts, proceedings of the Board; "three-mile" proceedings; sales of bonds, and purport to validate all bonds issued in good faith, and for value received.



(Acts 1911, p. 337, Sec. 7725c.)

**266. Reissue of F. G. road bonds, when.** The act, 1911, at page 337, provides for the reissue of a bond series in the event that the treasurer is unable to obtain bids for any issue of gravel road bonds within one year from their date of issue. The reissue of bonds shall not bear a greater rate than  $4\frac{1}{2}$  per cent. interest and they may be issued at any time within a year from the recall and retirement of the original bonds.

(Acts 1913, p. 473, Sec. 7724b.)

**267a. Extraordinary conditions—Board's duties—Dismissal.** When all preliminary matters relative to the construction of a free gravel road have been carried out, and it is found by the Board that such improvement shall not be made for the reason of failure to obtain bids within the estimated cost; that such improvement will exceed the tax limit of 4 per centum, as provided by law; or where two or more roads have been included and carried in an election, and only one or more of them can be improved, such remaining petitions shall be dismissed within forty days from such discovery.

(Section 7724b.)

**267b. Board advances payment—Reimbursement.** The Board thereupon without further delay shall pay out of the general fund of the county the per diem and expense of the engineer and viewers, the per diem of the necessary helpers, cost of notices given, expenses of election, a reasonable attorney's fee for petitioner's attorney, and all other costs and expenses incurred up to that time.

These sums shall be repaid to the county by the interested townships, in equal proportions, by an annual levy of tax by the Board upon the assessed property thereof within not more than 3 years.

Petitions for free gravel roads which may be dismissed by the Board for insufficiency; because of no public utility; defeat at an election, the costs shall be taxed to the petitioners, and if not paid within 30 days, the county auditor shall issue to the sheriff his fee bill for collection of such costs.

(Acts 1913, p. 913.)

**267d. Act of 1913—Payment to contractor.** Under the act of 1913, at page 913, Boards are authorized to levy a special tax in townships in which a free gravel road by taxation was under construction at the time the Supreme Court of Indiana declared the Highway law to be unconstitutional, to recompense the contractor for damages sustained.

## **267e. FLOOD PREVENTION—MARION COUNTY.**

(Acts 1915, p. 143, Sec. 5.)

The Indianapolis Flood Prevention Act of 1915 provides that the county shall pay forty-five per cent. of the cost of the public works to be erected by virtue of the act out of the general fund, or from the proceeds of a bond issue which is authorized.

The law is of local importance only and reference is made to the act.

**267f. FLOOD PREVENTION—ALLEN COUNTY.**

(Acts 1915, p. 319.)

The flood prevention act applying to counties having a city with population of 60,000 to 68,000 (Allen county), provides under Sec. 10, as follows:

**County may advance money.** For the purpose of obtaining offices, clerical assistance, legal and engineering services and paying the services of any officer hereunder, the county council of any such county and the common council of any such city may, by appropriation, general or specific out of its general fund, advance as a loan to such board of drainage commissioners, such sums of money as they may require, which sums shall be repaid to the county and city advancing the same when the expense of such offices, clerical assistance, legal or engineering services and service of such officers shall have been collected as a part of the cost of any work hereunder.

**GRAVEL PITS.**

(Acts 1913, p. 411, Sec. 7759-d.)

**268a. Condemnation proceedings for road material—Sale to township.** In counties of 90,000 to 150,000 population as shown by the last U. S. census, when by resolution of the Board, it shall be adjudged that it is necessary, in the interests of the free gravel roads or turnpikes to require an entry upon any land, stream or lake in such county, to procure gravel, sand, stone, timber or any other material for the repair of such roads, and giving a description of such lands, streams, rivers or lakes to be entered upon, and probable cost of same, and probable amount of material required, the Board may cause application to be made to the superior or circuit court for appointment of appraisers. Section 4, of the act, provides for the payment for the material obtained by the condemnation.

The Board is empowered to sell any of such material to township trustees for use of the townships at a price not less than its cost.

**268b. Purchase of necessary tools.** To carry out the purpose of the act, Boards are authorized to purchase, own and operate a dredge, stone crusher and such other tools and machinery as may be deemed necessary to facilitate the securing and appropriation of the road material, and the use of same on the highways of the county.

**GRAVEL ROAD CORPORATION—(TOLL).**

(Acts 1885, p. 180, Sec. 4518.)

**269a. Formation of toll roads.** Any number of persons having formed a corporation for the purpose of constructing a plank, stone or gravel permanent road, are given the right, with the consent of the Board, to locate same on any state or county road or public highway and collect tolls when constructed.

Such proceeding shall be made a matter of record and show the conditions upon which such grant was made by the Board.

This grant of such public road gives the management thereof to the incorporated company.

(Section 4518.)

**269b. Requirements of incorporators.** The application by the company must be made at a regular session of the Board, and after a fifteen days' newspaper notice has been given of the pendency of such application, likewise the posting of notices in five public places, one at the court house door and four along the line of the road.

Before the consent of the Board shall be given five resident freeholders living along or within one mile of the proposed toll road, may file their remonstrance against the location, and shall have a hearing at this session.

Either side may appeal, from the decision of the Board, to the circuit court, upon giving an appeal bond, with surety, to be approved by the auditor.

(Acts 1 R. S. 1852, p. 394, Sec. 4546.)

**269c. Ferry, when may be constructed.** When any incorporated toll road company has constructed its road to any navigable stream of water, it is authorized under the act to establish a ferry across such stream, from the end of its road, to transport persons and property.

Such company is authorized to charge and receive such rates of toll as may be fixed and established by the Board.

### GUARDING PRISONERS.

(Acts 1905, p. 584, Sec. 2190.)

**270. Appointment by sheriff—Guard's compensation.** The expense of guarding prisoners while at work outside of the limits of the jail or workhouse shall be paid out of the county funds, on the order of the Board.

The guard is appointed by the sheriff and vested with powers of a deputy, and shall be when in an incorporated town, the marshal, thereof, and in a city the street commissioner, as far as practicable.

The Board shall fix the compensation for the services of the guard.

**Note:** Reference is made to Sec. 527a-1, this book, concerning "workhouse."

### LAZY HUSBAND ACT.

(Acts 1915, p. 139, Sec. 2, Sub-Sec. 4.)

**270a. Payment to wife or children.** Where a conviction is had under the so-called "Lazy Husband Act," and the court orders that the person so convicted shall be compelled to work upon the public work in the county, it is the duty of the board of such county to allow and order payment out of the current funds to the wife of the prisoner, or to the guardian or custodian of his children, or to a trustee appointed by the court for that purpose, a sum not to exceed one dollar for each day's work of such prisoner.

**HEALTH.**

(Acts 1903, p. 161, Sec. 7618.)

**271. Powers and duties county health commissioner.** The county health commissioner, by virtue of his office, having in charge the management of prevention of contagious, infectious and pestilential disease, may cause removal of persons thus afflicted, and provide a proper place to be designated by him; may procure nurses and other attendants; to call upon peace officers to assist in prevention of disease; to supply free of charge diphtheria antitoxine for the poor, and other matters, all of which, upon such authority, the Board shall pay from the county fund.

**Note:** Reference is made to Secs. 7619, 7622 and 7625 Burns R. S.

**271a.**

**DEATH BY TUBERCULOSIS.**

(Acts 1915, p. 111.)

Section 4, of the act of 1915, provides for the disinfection of the premises vacated by the death or removal of a tuberculosis patient, under a prescribed formula; and that the expenses thereof shall be borne by the county, when the premises disinfected are located outside of a city or town.

(Acts 1909, p. 345, Sec. 7605.)

**272. When Board elects health commissioner.** The Board shall elect a county health commissioner on the first Tuesday of January, 1910, and every four years thereafter.

(Acts 1903, p. 161, Sec. 7617.)

**273. Payment of expenses.** A representative of all boards of health is required to attend the meeting of the state board of health, when so requested by that board, for conference concerning the prevention of contagious and infectious diseases, and other sanitary matters. The expenses of such delegate shall be paid out of the general fund by the Board appointing him.

**HIGHWAYS—ALONG CAVING BANKS.**

(Acts 1909, p. 72, Sec. 7679.)

**274. Procedure to make change.** Any public highway located on the banks of a stream, which by washing or caving renders it unsafe or inconvenient for travel, or in case of a highway using the bed of a stream, otherwise than crossing such, as a highway, it shall be the duty of the road supervisor of such road district to give notice to the owner to remove his fence back from the stream a distance to admit of the opening and construction of a road, not less than 40 feet. The owner failing to comply, it devolves upon the supervisor to call out liable hands, and remove the fence, with the least possible damage to the owner.

Should a house stand so near the water course as not to have suffi-



cient space left for such road, the supervisor is then authorized to open the highway in rear of such house.

(Acts 1911, p. 150, Sec. 7680.)

**275. Rights of landowner—Appeal to Board.** The amendment of 1911, (Acts 1911, p. 150) requires the road supervisor before removing such fence to stake out the change, as he desires, to make the road, and give written notice to the owner or his agent at least fifteen days before he changes the highway. During such time the owner or agent may file his claim for damage occasioned by such change, with the county auditor. Such proposed change is thereby suspended until the damage has been settled with such claimant.

If there be no claim filed within such period, such change shall proceed, the owner however, having the right to file his claim with the Board, for damage, within two years.

(Acts 1911, p. 150, Sec. 7680.)

**276. View of, ordered by Board.** In either case, before or after, when such claim has been filed by the owner, the Board shall appoint two freeholders to view the premises, and to assess amount of damage, if any, by reason of the appropriation and removal of fence.

(Acts 1911, p. 151, Sec. 7681.)

**277. Duty of viewer. How damages paid.** The viewers, after taking an official oath, and assessing damages, shall report same to the Board, which may be allowed from the county treasury. If deemed too great, the Board may appoint reviewers who shall proceed in like manner and assess such damages and report to the Board. The Board shall order such assessment to be paid from the county treasury.

If claimant feels aggrieved by such assessment he may demand a review, when the Board shall appoint re-reviewers who in a like manner as before shall reassess damages, and if not for a greater sum than the first assessment, such claimant shall pay the cost of such last review.

The provisions apply to all proceedings heretofore had in the case that change in the highway has not been made.

#### HIGHWAYS—CHANGE.

(Acts 1905, p. 521, Sec. 7665.)

**278. Procedure in change.** The Board may order a change of a road, heretofore located, running through the land of the petitioner, or on the lands of another person consenting to same.

Every such petitioner shall give notice of the pendency of his petition for such change by posting written or printed notices, twenty days before the first day of the term in which the petition is to be presented, in three public places in the vicinity of the proposed change.

(Acts 1905, p. 521, Sec. 7666.)

**279. Duties of viewers, in change.** The Board being satisfied that the petition has been filed and proof of the notice of posting has been

made, shall, as in other petitions, appoint three freeholders to act as viewers who shall report at the ensuing term of the Board, whether or not the public will be materially injured by such proposed change.

(Acts 1905, p. 521, Sec. 7667.)

**280. When reviewers appointed.** Upon filing of the report, and before action is taken thereon, if the report of the viewers is favorable, any freeholder may remonstrate, stating reasons therefor, why change should not be made, when an issue may be made thereon, which shall be tried by the Board, as other issues of fact are tried.

Upon the Board finding that the public will not be materially injured by such proposed change it shall make an order granting the petition, and upon satisfactory proof, then or thereafter, that the new road has been opened and made equally convenient for travelers, the Board shall order the old road to be vacated.

All costs are to be paid by petitioner. When the finding is made against the remonstrant he shall pay all costs caused by his remonstrance.

(Section 7668.)

**281. Compensation.** For compensation to viewers, reviewers, surveyor, chainmen and axman arising from the location, change or vacation, see "Fees and Salaries, 1913."

(Acts 1913, p. 233, Sec. 9852a.)

**282. Employment of prison convicts.** Under this act authority is given Boards and township trustees to contract with the trustees of the Indiana reformatory, and the board of control of the Indiana state prison to work the inmates upon the highways of their counties or townships, and make provisions for their care, custody and safety; the consent of the council or advisory board, as the case may be, being obtained.

### HIGHWAYS—LOCATION.

(Acts 1907, p. 443, Sec. 7649.)

**283. Procedure before Board—Location of.** There are three processes relating to highways of which the Board has a full jurisdiction, viz.: the location of a new highway, the change in a highway, or the vacation of one which is already established. When one of these lying wholly within the county is desired and is petitioned for, the Board must be satisfied that the petition is signed by at least 12 freeholders of the county, six of whom must reside in the immediate neighborhood of the proposed location, change or vacation; that the petition has been properly filed with the auditor; that notice had been given for two successive weeks in some newspaper printed in the county, or that notices had been posted, of the pendency of such petition, in three of the most public places in the neighborhood of such highway for at least twenty days before the meeting of the Board at which such petition is to be heard.

**284. Appointment of viewers—Qualifications—Re-location.** In the event that the notice is given by posting, it devolves upon the auditor to mail a copy of the notice to the postoffice address, if known, to each landowner affected by such proceedings, as disclosed by the petition, at least 20 days before the day of hearing.

The Board being satisfied, it shall then appoint three freeholders of the county to view such highway.

The publication, posting and mailing shall be by and over the name of the auditor, and he need not notify any petitioner.

(Acts 1913, p. 679, Sec. 7650.)

**285. Jurisdiction of Board within corporate limits—Duty of viewers.** The viewers are notified of their appointment by the sheriff upon precept issued by the auditor, showing the nature of such view, and object of their meeting. The viewers being qualified shall proceed to view such highway and if the object is found to be of public utility, shall, if a new highway or a change in an old one, proceed to lay out and mark the road on the best ground, not running through any person's enclosure of one year's standing without the owner's consent, unless upon examination a good way cannot otherwise be had without essentially departing from the route petitioned for; also when the line runs along a line dividing land of two parties one-half of the road shall be laid out on each side.

The Board has jurisdiction over lands and lots within the limits of a town or city when such proposed location, change or vacation is to be on the corporation line of such town or city.

When crossing such corporation line and entering a city or town, to terminate such road with a street or avenue, the Board must procure the consent of board of public works, the city council or town board, to locate such road on unplatted or unimproved lands.

(Acts 1905, p. 521, Sec. 7651.)

**286. Report of viewers.** The viewers are required to report their doings at the ensuing session of the Board. The report should include a full description of the location, or change, giving course, distance, width, metes and bounds; in a vacation, a sufficient description to designate it shall only be required.

In case an order of the Board for a vacation of a highway is made, the auditor shall transmit copy of such order to the trustees where such highway is situated. The trustee shall then notify his road supervisors of such order of vacation.

(Acts 1905, p. 521, Sec. 7652.)

**287. Duties of Boards—Notice to township trustee.** Should there be no objections made to the proposed highway, vacation or change, the Board shall cause a record made of same. In case of a location or change the Board shall order the road to be opened and kept in repair. Such order is made to the trustee of the township in which such location or change is made, who shall enter same at length on the township record book, and follow with notice to his supervisors to work the same.

(Section 7653.)

**288. Right of landowners to remonstrate.** If any person through whose land such highway, or change may pass shall feel aggrieved thereby, he may, before the final action of the Board, set forth such grievance by way of a remonstrance under oath, stating the sum that he is damaged.

The Board shall then order a review and appoint three disinterested freeholders, assigning a day and place to meet to make such review.

(Acts 1905, p. 521, Sec. 7654.)

**289. Duties of reviewers—Damages.** The reviewers shall meet at the designated time and place and there take an oath faithfully to do the duties assigned, and may then, or on adjournment to a later day, prior to the next session of the Board, proceed to review the proposed highway and assess the damages, if any, which may be sustained by the remonstrator by the location, change or vacation, and shall report at ensuing term of the Board.

(Acts 1905, p. 521, Sec. 7656.)

**290. When damages are paid, highway to be opened—Costs.** If the majority report of the reviewers shows damages to the remonstrator, and the road is considered by the Board of sufficient importance to the public, the Board shall order the costs and damages to be paid out of the county fund, otherwise such shall be paid by the petitioners.

If the majority report of the reviewers is against the claim of the remonstrator, he shall then pay the costs.

Upon payment of such damages, such highway shall be recorded, and ordered to be opened and kept in repair.

(Acts 1905, p. 521 Sec. 7656.)

**291. Unreasonable damages—Powers of Board.** If it shall appear that the damages assessed are unreasonable, the Board may set aside such assessment and order another review, regulated same as the first review.

(Acts 1905, p. 521, Sec. 7657.)

**292. Procedure upon remonstrances—Another review.** If any resident freeholder shall remonstrate against such proposed highway, before final action is taken by the Board, as not being of public utility, other reviewers may be appointed, who shall proceed as before outlined, and make report at the ensuing session of the Board, whether or not it will be of public utility.

A remonstrance for damages and for want of public utility may be filed at the same time and be referred to the same reviewers who shall be required to report on both phases of remonstrance.

(Acts 1905, p. 521, Sec. 7658.)

**293. Appeal to circuit court—Cost of review.** If reviewers make majority report against the public utility, the petition shall be dismissed by the Board; but if the report is favorable thereto, the re-



monstrator shall pay the cost of the review, and the highway shall be recorded and ordered to be opened and kept in repair.

An appeal to the circuit court lies either from dismissal of the petition or the establishment of the highway, the appellant filing a sufficient bond.

(Acts 1913, p. 11, Sec. 7659.)

**294. Damages must be paid within ninety days—Vacation of order.**

No such highway shall be opened, worked or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or until such persons shall give their consent thereto in writing, filed with the auditor of the county: Provided, That if such damages are not so paid or deposited, or such consent given and filed within ninety (90) days after the filing of the report allowing such damages, the proceedings for the opening, or change of such highway shall be deemed to be vacated and of no force or effect whatsoever: Provided, further, That if such proceeding be appealed, the damages, if any, allowed on such appeal shall be so paid or deposited, or such consent given and filed within ninety (90) days after the disposition of such appeal, and if not done in such time, such proceeding shall likewise be deemed to be vacated and of no force or effect whatsoever: Provided, That in cases where damages have heretofore been assessed the same shall be paid within ninety days from the time this act takes effect.

(Acts 1907, p. 443, Sec. 7660.)

**295. Bond required on renewed petition—Prohibition.** The Board is prohibited from acting upon a second or subsequent petition for location, change or vacation of the highway, which, on the first petition, the viewers reported not of public utility, unless the petitioners shall pay the costs of the former view and review, and shall file with the auditor an approved bond to pay all costs of the subsequent petition, in case of a like report of a want of public utility.

(Acts 1905, p. 521, Sec. 7661.)

**296a. Qualification of viewer—Relationship.** No person owning lands along any highway proposed to be located, changed or vacated, or who is related within the sixth degree of consanguinity, to persons owning lands along such proposed highway, is competent to act as a viewer or reviewer.

(Acts 1905, p. 521, Sec. 7662.)

**296b. When fences shall be removed on new road.** Whenever any public highway has been laid out through any enclosed land, upon notice in writing from the supervisor, such occupant or owner shall not be compelled to remove his fences till the expiration of sixty days, but not at any time between the first days of April and November shall he be compelled so to remove them.

If not done pursuant to such notice, the supervisor shall cause them to be removed at the owner's expense, and suit may be brought before any competent justice of the peace in the name of the township trustee, to recover the cost of such removal.

(Acts 1905, p. 521, Sec. 7663.)

**297. Width of roads—Must be recorded.** New roads must not be laid out less than thirty feet in width. Roads of twenty years standing shall remain of original width, until changed by law, and when not sufficiently described the Board shall have power, upon petition filed by one or more resident freeholders, and a proper posting of such petition, to ascertain, describe and record its width at not less than thirty feet. Where any road is located on line dividing farms of different owners one-half shall be taken from each owner.

**Note:** Reference is made to Secs. 330 and 331, this book, concerning the legislative acts for width of roads.

(Acts 1905, p. 521, Sec. 7664.)

**298. Highways ordered and non-used for six years.** Every public highway now, or hereafter, laid out which shall not be opened and used for a term of six years, shall cease to be a highway for any purpose, but if any distinct portion of such highway shall have been opened and used within six years, such portion shall not be affected by these provisions.

#### HIGHWAYS—PROHIBITIONS.

(Acts 1907, p. 445, Sec. 2313.)

**299. Penalty—Use of gravel roads in wet weather and thaw.** During wet weather and during a thaw, heavy hauling is prohibited by statute on any turnpike, macadam or gravel road, with the following limits, with a combined load:

Tires 3 to 4 in. wide, 3,000 lbs.;

Tires 4 to 5 in. wide, 3,500 lbs.;

Tires 5 in. or over 3,800 lbs.

The act defines a gravel road to include any road graveled with a yard of gravel to 8 feet wide and 9 feet in length of such road.

Supervisors have police powers in such matters, and a fine of \$5 to \$50 is assessed on conviction, and a fee of \$2 to party making the arrest.

(Acts 1905, p. 584, Sec. 2314.)

**300. Regulation concerning friction locks.** Boards may by an order require every person hauling loads with wagons on the public highways, turnpikes, gravel or macadamized roads, to have a friction lock on the wagon, to prevent a dead lock when necessary to lock same.

A violation of such order, when made, subjects the person to a fine not to exceed \$20, on conviction thereof.

(Acts 1905, p. 584, Sec. 2435.)

**301. Penalty—Failure of person having official supervision.** Any person having official supervision of roads in any district, who fails to keep the ways and bridges in as good repair as the available labor and other means will enable him to do, or fails in any other required duty, shall on conviction be fined \$5 to \$100.

**HIGHWAYS—GRAVEL ROADS BY ASSESSMENT.**

(Acts 1905, p. 521, Sec. 7694.)

**302. Procedure before Board—Requirement—Viewers and Engineer.** Upon petition of majority of resident land owners, representing a majority of acres of land lying within one mile of the improvement prayed for, viz.: laying out, constructing, improving by straightening, grading, paving, draining, graveling or macadamizing any public highway or part thereof; such board, if it shall be satisfied that due notice of application has been given by publication three (3) weeks successively in a newspaper of general circulation published in the county, the last of which publication shall have been at least ten (10) days before the meeting of the board at which such petition is to be presented, or by posting up notices in three of the most public places in the neighborhood of such highway at least ten (10) days before such meeting of the board, shall appoint three (3) disinterested freeholders of the county as viewers, and a competent surveyor, or engineer, to proceed, upon a day to be named by the commissioners, or any other day to which a majority may adjourn prior to the next session of such Board, to examine, view, lay out or straighten such highway as in their judgment public utility or convenience may require; and the county auditor of the county shall notify said viewers and surveyor of the time and place of their meeting, and they shall meet accordingly, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointment, respectively, shall determine what lands will be benefited or damaged by the proposed improvements, and shall take to their assistance two suitable persons as chain carriers, and one marker; and if the said viewers find that such improvement will be of public utility or convenience, and that the costs and expenses thereof and damages caused thereby will be less than the benefits to the lands within two miles of the improvements, excepting such lands and lots as lie within the limits of any incorporated town or city, they shall, upon actual view of all the lands within two miles of the improvement, excepting such as lie within such incorporated town or city, apportion the estimated costs, expenses and damages upon all the said lands within said two miles that will be benefited, according to the benefits to be derived therefrom. They shall assess the damages, if any, sustained by any person or persons through whose lands such road is proposed to be laid out, straightened or improved. In determining said majority, minor heirs shall not be counted for or against such improvement unless represented by a legal guardian, and the action of such guardian shall be binding upon such minors.

(Acts 1905, p. 521, Sec. 7695.)

**303. Estimates and report of viewers and engineer.** The viewers, and surveyor having performed their prescribed duties shall make report to the Board. Such report shall include a showing of the public utility of the improvement; an estimate of the cost and expenses, including reasonable attorney fees for the petitioners; the damages, if any, assessed to the several tracts of land; the benefit to each 40-acre

tract of land, or less, when existing; and give a description of the work proposed. A limitation of two miles from the contemplated improvement is made for assessments; and no assessment shall obtain to lands within incorporated towns and cities.

When such report has been filed, the auditor shall give newspaper publication, within the county for two successive weeks, once each week, at least 10 days before such hearing, stating therein the points between which the improvement is to be made, and the time that the Board set for its hearing of the report.

(Acts 1905, p. 521, Sec. 7696.)

**304. Duty of Board to give hearing.** At the fixed time for the hearing, the Board shall, if it is found that proper notice has been given, that the work is of public utility, and that the benefits exceed the damages and expenses, enter its order that the improvement shall be made, specifying kind, width and extent of same.

(Acts 1905, p. 521, Sec. 7697.)

**305. Powers of Board—Hearings—Amendments.** The Board has power to permit amendments, either to the petition, or to the report; to extend time to the viewers to make their report; and to continue the hearing from time to time.

(Acts 1905, p. 521, Sec. 7698.)

**306a. Causes for remonstrance.** Owners of lands affected by the proposed work may remonstrate against the report for cause, to-wit:

On or before the day fixed for the hearing of such report the owners of any lands affected by the work proposed may remonstrate against the report, which remonstrance shall be sworn to, and may be for any or all of the following causes:

First. That the report of the viewers is not according to law, stating specifically the illegality claimed;

Second. That the lands of the party filing the remonstrance are not benefited, or are assessed too much as compared with other lands assessed as benefited, specifying such lands;

Third. That the lands of the party filing the remonstrance are damaged, and that the damages assessed are inadequate;

Fourth. That it is not practicable to accomplish the proposed work without an expense exceeding the aggregate benefits;

Fifth. That the proposed work will not be of public utility.

**306b. Consolidation when more than one remonstrance.** If more than one party remonstrates, the causes shall be consolidated and tried together, the report of the viewers being prima facie evidence of the facts mentioned therein. The Board shall try the issues thus formed, and if Board finds for the remonstrants under the fourth clause, the petition shall be dismissed at cost of petitioners, unless donations are made and secured to sufficiently make equal the expenses of the work and the damages allowed.

**306c. Assessments, become first and paramount liens.** If the board find for the remonstrants upon the second and third cause of remon-



strance, such board shall modify the assessments and equalize the same and assess the damage as justice may require, and thus modified and equalized the assessments shall stand and be adjudged valid. The only questions that shall be raised shall be those raised by the remonstrance. If the assessment upon the lands of any remonstrant is not reduced twenty per cent. or the damages claimed by any remonstrant are not increased twenty per cent., such remonstrant shall pay all costs occasioned by such remonstrance; but if such assessment be reduced more than twenty per cent., or the damages be increased more than twenty per cent., then the remonstrant shall recover costs and the Board shall apportion such costs pro rata upon the lands assessed for benefits. Such assessments when confirmed by the board of commissioners, or higher court on appeal, shall constitute first and paramount liens on the real estate respectively assessed, as taxes are liens, which liens shall relate back and bind the real estate so assessed from the time of the filing of the report. The auditor shall at once enter such assessments upon the tax duplicate, to be collected by the county treasurer as state and county taxes are collected, with interest at six per cent. per annum, (in) installments as hereinafter provided, and the moneys collected shall be used exclusively in payment of the bonds, costs and expenses of such work, as hereinafter provided.

(Acts 1905, p. 521, Sec. 7699.)

**306d. Appointment of superintendent.** When the improvement has been ordered, the Board shall appoint a superintendent of construction, who shall file bond to be approved by the Board in double the amount of the assessments, and take an oath or affirmation, honestly and faithfully to discharge his duties.

(Acts 1905, p. 521, Sec. 7700.)

**306e. Powers and duties of superintendent.** The act covers the duties of the superintendent of construction, who is charged with the execution of the work; the letting of contracts for its construction as a whole, or in parts; giving newspaper notice of the letting of bids; the receipt of proposals, with accompanying bonds to be approved by the Board; and other requirements relative to the construction of the proposed improvement.

(Acts 1905, p. 521, Sec. 7701.)

**306f. Duties of superintendent—Issue of Bonds.** As soon as the contracts have been let for the construction of the improvement, the superintendent shall make the assessments upon all lands benefited, ratably upon the benefits which have been confirmed, equal to the amount necessary to pay for the work and expenses to accrue, not to exceed the amount of whole benefits adjudged upon any one tract. The superintendent shall then issue his notice mentioning the establishment of the improvement by the Board, also setting out such confirmed assessments and cause this notice to be recorded in the office of the recorder, when such assessment shall be a lien upon such several tracts of land. Whenever any such assessment has been paid, it shall

be the duty of such superintendent to enter such satisfaction of the lien on the record. In case that bonds are issued, as arranged in the act, when requested, it shall then be the duty of the superintendent to enter on the margin of the record, the words, "bonds issued", which will have the effect to transfer the record of the lien from the recorder's office to the gravel road duplicate in the office of the treasurer.

(Section 7701.)

**306g. General duties of superintendent in construction—Waiver—School funds.** The act fully prescribes the duties of the superintendent of construction, as to his collections and payments, penalties for non-payment and duties when default is made.

Gravel road bonds may be issued, if landowners so request within 30 days from the establishment of the work. This is done on the written request which includes a waiver of objection to any irregularity in the proceedings. Such bonds are to be issued payable in ten annual installments, bearing interest at 6 per cent. per annum, payable semi-annually on June 1st and December 1st, and shall be a lien on the lands only of persons filing their written requests, and in no wise interfere with or affect the collections on other parcels charged under the assessments.

The Board having ordered an entry of all requests for bonds and the waivers, and report of the superintendent, and its approval, the Board shall then direct the auditor to prepare his assessment roll, or gravel road duplicate, on account of such bonds.

Such bonds shall be issued in denominations of \$100, or any multiple thereof, except that one bond may be less than \$100.

Any landowner desiring to relieve his land of the lien thus made, may at any time pay off the total of unpaid installments together with all interest due thereon. The treasurer's endorsement of such payment on the duplicate acts as a release of such lien.

The bonds when issued shall be signed by the members of the Board and attested by the auditor, and shall be dated from date of letting the contract and shall show on their face the purposes of their issue. When thus completed the bonds shall be turned over to the treasurer, who by newspaper notice and a posted notice at the court house door shall after twenty days, on a day named and at the hour of 10 o'clock a. m., proceed to sell such bonds at not less than the principal sum named in such bonds, for cash to the highest and best bidder. In lieu of such sale the Board may order that the bonds be exchanged at par for any unloaned funds, school or other fund. In case such bonds shall sell at a premium, such amount shall be apportioned, ratably to each parcel and be applied to the first maturing installment.

(Acts 1905, p. 521, Sec. 7702.)

**306h. Application of surplus—Discharge of superintendent.** When the work of graveling, macadamizing or otherwise improving such highway is completed, and the superintendent shall certify the same to the auditor, the Board shall receive the improvement, and provide

for keeping such road in repair. Within sixty days therefrom the superintendent shall make a report of all receipts and disbursements, surrendering all vouchers to the Board for their approval or rejection. The superintendent shall within ninety days distribute the surplus funds, if any, to persons from whom such were received, taking vouchers for same and turning them in to the Board.

When the Board has approved the report of the superintendent, he shall then be discharged.

If by any reason any further surplus funds remain in the hands of the superintendent, it shall be paid into the treasury by him and credited to the gravel road fund.

(Section 7702.)

**306i. Duties of auditor—Satisfaction of lien.** Whenever the owner of any tract of land pays off the assessments charged against it, it becomes the duty of the auditor to officially release and satisfy the assessment lien upon the record where such appears.

(Acts 1905, p. 521, Sec. 7704.)

**306j. Appeal to circuit Court.** Any person who appeared before the Board as a remonstrant shall be allowed an appeal to the circuit court.

(Acts 1905, p. 521, Sec. 7705.)

**306k. Advantage of error—Not permitted.** No person shall be permitted to take advantage of any error, informality, or defect in the proceedings, or work, unless the complaining person is affected thereby.

(Acts 1905, p. 521, Sec. 7706.)

**306l. When city or town levies tax for.** When any highway is to be improved, under the provisions of this act, which terminates in any city or town, the corporate authorities, of such city or town, may on an agreement with the Board levy a tax for the payment of an amount not exceeding one-fifth of the entire cost of the improvement, in addition to any assessment on the real estate already and otherwise provided for; conditioned, that the entire road tax in such corporation, in any one year shall not exceed 50 cents on the \$100.

(Acts 1905, p. 521, Sec. 7707.)

**306m. When extension into adjoining county.** When it may be desirable to extend any highway improvement into or through an adjoining county, the same proceedings, in all things, shall be had in such county, as have had mention in relation to one county.

#### HIGHWAYS—ONE MILE OR LESS.

(Acts 1913, p. 861, Sec. 7708.)

**307. Highways one mile or less—Maintenance—County system.** Whenever there shall be constructed in any county of this state any public gravel road or turnpike not less than one-half ( $\frac{1}{2}$ ) mile in length, except where the entire length of the road is less than one-half ( $\frac{1}{2}$ )

mile, and connected with any free gravel road or terminating at any town or city, the same having a substantially graded roadbed not less than twenty (20) feet wide, with suitable side drains, culverts and bridges, and with grades not exceeding the maximum of free gravel or turnpike roads of such county, and having placed thereon not less than one (1) yard of suitable gravel or broken stone for every three (3) feet in length in such manner as to make a suitable road for public travel, then on the written request to the Board of Commissioners for such county, of not less than three (3) freeholders residing in the road district wherein such road is situated, said Board of Commissioners shall make inspection thereof, and for such purpose may employ a competent engineer to assist them. If upon such examination such road in their opinion is of public utility, and shall conform to the requirements herein, they shall cause an entry to be made on their records of such facts, and also enter thereon a description of the commencement and terminus thereof, and general description of the route of the same, and thereafter such road shall be deemed a part of the free gravel or turnpike roads of such county, and maintained as by law provided.

#### HIGHWAYS—COUNTY LINE.

(Acts 1905, p. 521, Sec. 7709.)

**308a. Procedure when on county line.** When it is desirable to make any gravel or other highway improvement upon the boundary line between two counties, such as contemplated in this act, the petition therefor shall be filed with the Board of one county, when the auditor shall be instructed to transmit to the Board of the other county a copy of such petition, and a notice of the time and place of a joint meeting of the Boards of both counties to act upon same. A day not less than twenty nor more than thirty days therefrom shall be named.

(Acts 1905, p. 521, Sec. 7709.)

**308b. Boards of each county to join in proceedings—Powers of first Board.** The two Boards shall act together in all matters relating to the improvement, and the same proceedings shall be had in all the provisions of the act as near as may be.

Should the second county refuse or fail to act, the first county may proceed to make the improvement, and has power to make all assessments on lands within two miles on each side of such line, as if they were wholly within one county.

(Section 7709.)

**308c. When constructed on state line—Procedure.** When it is desirable to improve a highway on a boundary line between this state and an adjoining state, upon petition, the Board of the county in this state is empowered to unite with the proper authorities in the adjoining state, in accordance with, as far as may be, the proceedings authorized as between two counties.

The foreign county shall be required to pay one-half of such improvement, construction and expenses, and shall thereafter keep one-



half of such road in repair, according to the laws of this state, so far as practicable.

(Acts 1905, p. 541, Sec. 7710.)

**308d. All such roads to be free from toll.** All roads constructed under this act shall be free from toll.

Nothing in this act shall in any wise interfere with township trustees in making gravel roads and paying for the same out of their township road funds.

#### **HIGHWAYS—GRAVEL ROADS BY TAXATION.**

(Acts 1915, p. 680, amending Sec. 7711a.)

**309a. Procedure before Board by petitioner—Jurisdiction.** Boards are authorized and empowered to lay out, establish and cause to be graded, drained and paved with stone, gravel, brick or combination thereof or other road-paving material, any new highway or part of a highway in any township or townships in the county; or to straighten, grade, drain and improve in like manner any highway already established within any two or more townships within the county, under the following conditions:

That where any such improvements are made of highways extending into or through two or more townships, the Board in its order establishing such improvements, shall fix the proportion, or part of the cost of the improvement, that each of the affected townships, shall pay and be assessable with, according to the amount estimated for the improvement to be made in such township, so that such payment will be made in the proportion fixed by the Board. Provided, That the rebuilding of free gravel or macadam highways shall be done in the same manner as the building or improvements of highways: and Provided, further, That all petitions for rebuilding of such roads begun under an act entitled, "An act to amend section sixty-two (62) of an act entitled, 'An act concerning highways,' approved March 8, 1905, and declaring an emergency," approved March 15, 1913, are hereby validated and continued the same as if the same had been filed under the provisions of this act: Provided, That nothing in this act shall affect or apply to any pending litigation.

(Section 7711a.)

**309b. Legalization of bonds under act of 1905.** Former proceedings of the Board, under the act of 1905 and amendments thereto, where the proportions had been fixed; where contracts had been let and bonds issued, their sale and all matters therewith connected are legalized, by the amendment of 1913, page 915.

(Acts 1915; p. 618, amending Sec. 7712.)

**310a. Requirements as to the petition.** Whenever a petition signed by 50 or more freeholders and voters of any township of any county in this state praying that any public highway or highways within such township shall be laid out, established and improved by grading, draining and paving with stone, gravel, or other road paving material, in-

cluding brick, or that any public highway or highways already established shall be graded, drained or paved with stone, gravel or other road paving material, including brick; or by 50 or more freehold voters of two or more townships in such county praying that such public highway shall be laid out, graded, drained and paved on a line dividing such townships, or that a highway on such line shall be graded, drained and paved, shall be addressed to the Board of Commissioners of the county in which such township or townships are located and filed in the office of the auditor of such county, it shall be the duty of such auditor to cause to be published in a weekly newspaper of general circulation printed and published in such county, and to be posted in not less than three public places within each of the townships named in such petition, and at the door of the court house of such county a notice setting forth the township in which the same is located, a description of the highway proposed to be improved, the term of court and the day upon which the same will be presented for hearing before said Board of Commissioners: Provided, That in any township in this state in which there are not to exceed 100 freehold voters, then upon a petition of a majority of the freehold voters of any such township to the Board of county commissioners for the improvement of any road or roads, as required by 50 freehold voters, as in this act provided, then this act shall apply in all such cases, and the Board of County Commissioners shall proceed under such petition and notice according to the provisions of this act, the same as if upon the petition of 50 freehold voters, as in this act provided.

(Acts 1905, p. 521, Sec. 7713.)

**310b. Other necessary requirements to complete petition.** The petition for a free gravel road, by taxation, must set forth the beginning, course, and termination of each highway sought to be laid out and improved, the beginning and termination and a general description of each public highway to be graded, drained and paved, together with a recommendation of the width of each such highway; and the petition may include one or more of such highways at the option of the petitioners.

(Acts 1905, p. 521, Sec. 7714.)

**310c. Duties of auditor.** Upon the filing of a petition for a free gravel road, the auditor shall fix, by his endorsement on same, a day, not more than 30 days thereafter, when the petition shall be presented to such Board, and the notice prescribed in the act shall be signed by the auditor. It shall be published two consecutive weeks in a newspaper, and posted not less than 15 days before the day designated by the auditor.

(Acts 1905, p. 521, Sec. 7715.)

**310d. Hearing—Proof—Engineer—Viewers.** On the day so designated, by such auditor, the petitioners may make proof of the publication and posting of such notices and present such petition to such Board of Commissioners, and any taxpayer of any township named in such petition, or of any person or corporation whose lands

or property will be affected by the work therein prayed for, may file in writing his objections to the form or sufficiency of such petition, and in the event that such Board shall deem such petition to be deficient in form, or insufficient in substance, the petitioners shall be permitted to amend the same, but if such petition be not amended in such manner as to be in due form and sufficient, it shall be dismissed at the cost of the petitioners. If on the other hand such petition shall be adjudged by the Board to be in due form and sufficient either in the first instance or after the same has been amended, such Board of Commissioners shall make an order causing such petition to be spread of record and referring the matter therein prayed for to a competent civil engineer to be appointed by such Board and two viewers, each of whom shall be a responsible freeholder and voter of such county, and not a resident of, nor the owner of taxable property in any township named in such petition.

**Note:** Under this act of 1911, at page 185, it is required that the county surveyor, if he be a competent civil engineer, shall have charge of all surveying and engineering work of his county.

(Acts 1905, p. 521, Sec. 7716.)

**310e. Meeting of viewers and engineer.** The viewers and engineer shall meet at the time and place designated by the Board, and each shall take an oath faithfully and impartially to discharge his duties.

**Note:** Under the provisions of act of 1913, at page 69 (Sec. 9510a Burns R. S.), the surveyor is required to give a general bond of not less than \$5,000, which covers all duties to be performed by him.

(Acts 1905, p. 521, Sec. 7717.)

**310f. Determinations to be made by viewers and engineer—Report.** The viewers and engineer, having been duly qualified, shall promptly proceed to make all needful surveys of the road, or roads, mentioned in the petition, and shall determine:

- (a) Whether or not the proposed new highway, as described in the petition will be of public utility;
- (b) Whether or not it will be of public utility to grade, drain and pave such highway prayed for;
- (c) The width of each proposed highway;
- (d) The character of the improvement, including grading, draining and paving of each highway determined to be of public utility; with complete plans and specifications of each improvement, and of all bridges; culverts and waterways required therein;
- (e) The estimated cost of the improvement.

And on a day designated by the Board in its order appointing the engineer and viewers, unless an extension of time has been granted, they shall file their written report in the office of the auditor, setting forth their determination as to each proposed improvement petitioned for, including an accurate description of each new highway to be laid out, established, graded, drained and paved, together with recommendations as to paving materials to be used in each instance.

Complete plans and specifications are required to accompany such report and an estimate of the cost of each improvement as well as an accurate profile of each highway, to be made by the engineer, exhibiting all cuts and fills, per each 100 feet.

(Acts 1905, p. 521, Sec. 7718.)

**310g. How assessments shall be made by viewers and engineer.** The report and the engineer's profile shall remain in the auditor's office open to inspection for at least ten days; during which time the viewers shall assess such damages as shall be justly due any infant, idiot or person of unsound mind, and to any person or corporation filing a written claim for damages on account of appropriation of or injury to his land by reason of laying out such highway.

After the expiration of such ten days and at the next meeting of the Board, the viewers shall make their supplemental report to the Board, setting forth the damages allowed on above account, and give a description of the property in each case for which such damages are allowed.

The act prohibits an allowance to any person after the filing of this supplemental report.

(Section 7718.)

**310h. Requirements relative to infants, idiots and insane persons—Costs.** Objections in writing, at such session, may be made by guardians of infants, idiots and unsound-minded persons, to the allowances made them by the viewers, whereupon the Board shall appoint three other viewers, who after being qualified, shall examine the lands or property claimed to be damaged, and assess such damages as to them is deemed just and reasonable, and make report of their doings in writing to the Board. A full record, in all matters, shall be made, and in the event of the construction of such improvement, such damages shall be paid from the proceeds of the sale of the bonds, provided for in the act.

In case the damages fixed by the second view does not exceed the first award by 10 per cent., the costs of such review shall be paid by the claimants.

(Acts 1915, p. 646, amending Sec. 7719.)

**310i. Proceedings under the "three mile" act—Election.** The section, No. 70, Act 1905, p. 521, generally known as the "Three-mile act," was amended in 1907 page 68; 1909, p. 353; 1913, at page 419, and 1915 at page 646.

This section, as amended, provides that when all matters relating to damages have been finally determined, the Board shall examine the reports of the viewers and the engineer's profile and may either approve said report or may adopt such modifications and amendments to such report as said Board may deem necessary and proper, and said Board may require the services of the engineer and viewers in fixing and adopting such modifications and amendments, and when such report shall have been accepted and approved or modified and amended by said court and if found and adjudged to be in due form and sufficient,



the Board shall then direct the auditor to give his three consecutive weeks' local newspaper notice that on a day to be fixed by the Board the polls will be opened at the precincts of such township, for purpose of holding an election, to determine whether or not the free gravel roads petitioned for shall be constructed. The published notice shall contain the report of the viewers and engineer, excepting plats and profiles.

(Section 7719.)

**310j. Powers of Board—Without election—"Three-mile."** The act provides and authorizes the Board, under certain conditions, where the petitioned road is three miles or less in length, if it is found that the petition fully conforms to the act, to establish and order the construction of said road without submitting the question of building the same to an election.

**310k. Tax-payer's right of appeal—Remonstrance—Conditions.** These conditions, above mentioned, of the "Three-mile" highways are as follows:

1st. Connecting at each end with an improved free gravel or macadamized road, either within said township or townships, or at the boundaries thereof;

2d. Connecting a free gravel or macadamized road with a boundary of said township;

3d. Connecting an improved free gravel or macadamized road with the boundary line of any incorporated city or town in the same township;

4th. Connecting the boundary line of any incorporated city or town with the boundary line of the township in which said incorporated city or town is situated:

Provided, That if within 20 days after the day set for hearing, there shall be filed with the Board a remonstrance, signed by a greater number of freeholders and voters of such township than appear on the petition asking for such highway, then the petition shall be dismissed by the Board at the cost of the petitioners.

But if there is no such remonstrance filed, the Board shall proceed with such construction, as if an election had been held and voted in its favor.

A person signing both the petition and the remonstrance shall not be counted.

Any taxpayer of the county, aggrieved by the action of the Board may within ten days appeal, filing an approved bond for costs, to the circuit court, where it shall be tried as anew.

(Acts 1905, p. 521, Sec. 7720.)

**310l. How elections are to be held.** The election ordered shall be held on the day fixed by the Board, and shall be governed in all respects by the laws of the state relating to general elections.

The Board shall appoint two election commissioners, who with the auditor shall prepare the ballots, "For the road" and "Against the road," the form being outlined in the act.

If a majority of the votes cast at such election be found in favor of the establishment and improvement of the proposed road, the Board shall make an order for the establishment of same, in line with the terms of the report, plans, specifications and profile.

(Acts 1915, p. 644, amending Sec. 7721.)

**310m. Issuance of bonds—Municipal authorities—More than one road.** If all the roads described in report of the engineer and viewers are connected with each other so as to form one system, the whole may be voted on as if one road, if petitioners so pray in their petition.

If there are two or more petitions respecting roads, in same township, pending at the same time, they shall be voted on at the same election. No improvement of any street in any incorporated city or town shall be made under the provisions of this act, where the whole of said improvement lies within the corporate limits of any said city or town.

(Section 7721.)

**310n. Common council's jurisdiction—Issuance of bonds.** Should any street of any town or city be improved under the provisions of this act, and the expense per mile of same is greater than the average expense of that part outside of the limits, such town or city must take care of such excess and pay such amount, the same being charged against the taxing district within such town or city.

The Board shall issue bonds for the entire cost of the improvement, and levy an annual tax to pay the principal and interest thereof, as provided by law.

After such street shall have been improved under this act the trustees of the town or the common council of the city shall have control of the same and maintain the same in repair.

(Acts 1905, p. 521, Sec. 7722.)

**310o. Procedure in advertising—Indianapolis newspaper.** When the Board has ordered any such highway to be laid out, graded, drained and paved, it shall be the duty of the Board to make an order to advertise for bidders, requiring the auditor to give one insertion in a daily Indianapolis newspaper, and three weeks consecutive notice in a local weekly newspaper, and may require similar notices to be posted at public places in the township where the roads are to be improved.

The publication in the Indianapolis daily newspaper must be made at least two weeks before the day fixed for letting the contract.

(Acts 1905, p. 521, Sec. 7723.)

**310p. How proposals to be opened in open meeting—Bond.** On the advertised day, as named in the notice, the Board shall convene in session and receive sealed proposals and open the same in the presence of the bidders, and shall let the contract for the construction of such road or improvement to the lowest responsible bidder, but in no case shall a contract be let for a bid higher than the estimates made by the viewers.

Accompanying the proposal, the bidder is required to submit his bond in a penal sum of double the sum of his proposal, with good and

sufficient sureties, to the approval of the Board, for the faithful performance of the work according to plans, specifications and the profile. If the proposal covers more than one highway, one bond for the whole will be sufficient.

**Note:** Reference is made to Sec. 5896a-c Burns R. S., Secs. 430a-c this book, concerning public contracts.

(Acts 1913, p. 648, Sec. 7724.)

**311. Procedure of Board in new lettings—Without remonstrance—**  
**Cities, towns less than 30,000.** Whenever in townships, including towns or cities, of less than 30,000 population, whether pursuant to an election or otherwise, upon petition of freeholders, the Board has ordered the establishment or the improvement of any highway, and after due publication has received no bids, and upon investigation it is found that the cause thereof is that the estimates of the viewers and engineer is less than the cost of procuring the same to be constructed, then the Board may appoint an engineer and two viewers, having statutory qualifications, to prepare a new estimate, and report same to the Board. If the Board approves the report, it shall be placed on record, and two weeks' newspaper notice of the new estimate and amount thereof, shall be published. If within twenty days thereafter a remonstrance is filed with the auditor, signed by a majority of the legal voters of the township interested, the said proceedings shall end. Otherwise, if no remonstrance is filed, the new estimate shall stand and shall be taken and considered to be a part of the original report of the engineer and viewers of such road. The Board shall then proceed to advertise and let the contract for construction of the roads according to law.

(Acts 1907, p. 572, Sec. 7725.)

**312. Proceeds of bond sale to be kept separate—Bonds, how sold.** For the purpose of raising money to pay for the construction, the Board shall issue the bonds of the county, not to exceed in amount the contract price and all the expenses incurred and damages allowed prior to the letting of the contract, and a sum to pay the per diem of the engineer and superintendent, hereinafter provided for, during the construction of the work. Such bonds shall be in denominations of not less than \$50 each, and in 40 equal series; payable in 20 years in 40 installments, equally, and successively every six months.

Such bonds shall mature either the 15th day of May or the 15th day of November, as the case may be. It is provided that if the date of issue be prior to the date of annual tax levy, the initial or first bond and interest coupons of all bonds shall mature on the 15th of May of the next succeeding year; and it is further provided, that if the bonds are issued in any year after the general tax levy, then the initial bond and all the first interest coupons shall mature on the 15th day of May of the second succeeding year thereafter, and the balance of the bonds and their coupons at regular intervals of six months.

The act also provides that the petitioners may ask that the issue of such bonds be issued in series, payable in not less than ten years and not to exceed twenty years, in the \$50 denominations, and the Board shall issue the bonds in compliance with such request.

Should no mention be made in the petition relative to the issues, the Board shall designate the term of years for their issue.

The treasurer, shall sell the bonds at not less than their face value and keep the proceeds as a separate and specific fund to pay the cost incurred in the construction of the road, upon warrants issued by the auditor as directed by the Board.

The allowance to the contractor in no case, during the progress of the work shall exceed 80 per cent. of the engineer's estimate, nor shall the whole amount be paid him until the road has been completed and received by the Board.

(Acts 1913, p. 421, Sec. 7726.)

**313. Duty of Board concerning tax levies—Principal and interest—How taxpayer may obtain credit for material and labor.** For the purpose of raising money to meet said bonds, and the interest thereon, the Board shall annually after their issue, at the time the general tax levy is made, levy a special tax upon the property of the townships affected, which shall be collected as other taxes and shall be applied to the payment of the maturing bonds and interest.

If the roads are constructed into two or more townships, the amount paid thereon shall be divided and charged upon the property of each township in the ratio that the property of such township bears to the total property of all the townships through which each of such roads runs.

The amended act also requires the contractor to give preference in employment to resident labor in the township, if as good and effective as elsewhere, and at no greater cost.

The amended act also provides that any taxpayer of the township who may render service or labor, or furnish material for the construction of such road, may elect to demand a certificate from the contractor giving value of such service, labor or material, which amount shall act as a credit on the contract, and the certificate issued shall act as a quietus for such amount of taxes when presented to the county treasurer.

**Note:** Clearly the last sentence of this section should not be taken literally, for the reason that the state, county and township funds might be depleted under that construction. It is evident that the legislative intent was that the section should be construed as if it read: "and it shall act as a quietus against a similar amount of taxes against the property of said taxpayer, levied by virtue of this section."

(Acts 1905, p. 521, Sec. 7727.)

**314. Roads when built free from toll.** All roads built under this act shall be free from toll, and shall be kept in repair the same as other free gravel roads constructed under the other laws of the state.

(Acts 1905, p. 153, Sec. 7728.)

**315. Gravel roads on abandoned right of way—County system.** Any highway located, now or hereafter, upon any abandoned right of way of a railway, shall become a part of the gravel road system, and shall be kept in repair same as other free gravel roads.



The road shall be subject to and governed by the same laws governing the repair and keeping in repair of free gravel roads.

(Acts 1913, p. 941, Sec. 7729a.)

**316. How surplus tax must be applied.** The act, 1905, page 521, taking care of any surplus tax arising from the special tax for construction of free gravel roads, by transferring to the "gravel road repair fund", was amended by Act 1911, page 613, by transferring to the "road fund" of the township in which such road was built.

This was further amended by Acts 1913, transferring such surplus funds to a "general gravel road by taxation fund," and the Board acting in behalf of such townships shall transfer from such fund a sufficient amount to liquidate the indebtedness of any free gravel road in such township in which the bond issue was insufficient.

If, after such transfers, a surplus still remains, it shall be applied on the payment of interest or principal, or both, of any gravel road bonds of such township, on the order of the Board.

(Acts 1905, p. 521, Sec. 7730.)

**317a. Appointment of superintendent—Bond—His duties—Auditor's duty—Amendments.** Amendments are admissible at the hearing, by the Board, to the petition for a free gravel road, and the Board may extend the time to viewers to make their report, and continue the hearing from time to time so as to subserve the ends of justice.

As in the construction of gravel roads by assessment, it becomes the duty of the Board to appoint a competent superintendent to supervise the construction of such road according to the plans, profiles and specifications as adopted before the letting. He must be a resident of the township, or one of them, where the road is located; and under the act is required to give a bond in the penal sum of \$5,000, and it is his duty to render a monthly account to the Board of the actual time of his services.

The engineer, which is the county surveyor, if he is competent, is required to cause the roads to be built and constructed according to such accepted plans, profiles and specifications, and is liable on his bond, in suit, for any damages caused by his failure so to do.

An engineer, other than the county surveyor, is required to give a bond specifically for \$6,000, but if the supervision is by the county surveyor, under the act of 1913, at page 69, the general official bond therein required, the amount of which is fixed at not less than \$5,000, is sufficient.

(Acts 1905, p. 153, Sec. 7731.)

**317b. Duties of auditor—Complete record.** The auditor is required to make a complete record of all proceedings in making such improvements.

(Acts 1915, p. 644, amending Sec. 7725a.)

**318a. Bonds—Fixing limitation and order of issue.** It shall be unlawful for any Board of County Commissioners in the State of Indiana, to issue bonds, or any other evidence of indebtedness payable by taxation, for the construction of free gravel or macadamized roads under

any law in force in this state, when the total issue for that purpose, including bonds already issued and to be issued, is in excess of four (4) per centum of the total assessed valuation (after deducting all mortgage exemptions) of the property of the township or townships wherein such roads are located or to be located, and all bonds or obligations issued in violation of this act shall be void: Provided, That all such bonds shall be issued in the order in which the judgments establishing the respective roads are rendered: Provided, further, That in determining the total issue of bonds as herein referred to the amount of tax collectible during the current year for the payment of road bonds then issued and outstanding and for which the tax levy has already been made shall be deducted from the aggregate total of such bonds, and the amount remaining shall be and constitute the total issue of such bonds as herein defined: and Provided further, That no petition shall be filed when the cost of the road petitioned for would make the total bond issue exceed said four (4) per centum, except those petitions which have heretofore been filed and publication of notice thereof made.

**Note:** Evidently this act supersedes Sec. 7732 Burns R. S.

(Acts 1905, p. 521, Sec. 7733.)

**319b. Completion of improvement—Duties of engineer and superintendent.** Whenever any superintendent and the engineer of any road constructed under the free gravel road law, by taxation, believes that the road or any part of it, less than the whole, is completed according to contract, plans, plats and profiles, they shall, each, file their sworn statements with the auditor, stating such completion according to the plans, plats, profiles and contract, under which such improvement was let, and that the quantity and quality of material used therein was that required in such contract.

Such proofs of completion of such road, or a part thereof, are required to be filed ten days before the first day of the regular session of the Board, and if within such time any taxpayer interested in the improvement shall file his sworn statement that such part or whole of the improvement has not been completed, as stated, the Board shall set a day for hearing such issue and hear other proof on such matter, which shall be heard by the Board as other cases are heard by it.

If the Board finds that the road has been perfectly completed, it shall then accept and receive such whole, or part, of the completed road.

If the Board finds that the road has not been completed, it shall refuse to accept the same, and shall require the contractor to complete the same according to plans, plats, profile and contract.

If the Board finds that the road has been perfectly completed, the costs made in the hearing, shall be paid by the objecting taxpayer; otherwise, if found that the road is incomplete, the costs of the hearing shall be paid by the contractor.

Either party in the matter has the right of appeal, within thirty days, to the circuit court, upon filing an appeal bond approved by the auditor. Such proceedings are to be tried anew in the circuit court.

(Acts 1909, p. 104, Sec. 7734.)

**319c. Additional bonds, when may be issued.** Sec. 83 of the act of 1905, p. 561, as amended by act of 1909, at page 104, provides for the issuance of additional bonds, limited to ten per cent. of original issue, but not exceeding \$1,000, on account of free gravel roads, constructed under the act of 1901, at page 454, and amendatory and supplemental acts, in the event that such original issue was inadequate to pay for the contract for construction and all other expenses.

Such bonds shall be issued in same manner as the original issue and be payable in five years.

### HIGHWAYS—CONNECTING ROADS—COMPLETION.

(Acts 1907, p. 211, Sec. 7735.)

**319d. Procedure before Board—City less than 30,000.** The act of 1903, at page 288, as amended, Acts 1907, page 211, provides for the completion of connecting free gravel roads which were constructed under the laws approved March 3, 1893, and amendments of March 11, 1901, upon petition to the Board. This includes:

Any free gravel, stone or other macadamized roads in any township or townships contiguous to each other in such county, including in such township or townships all towns and cities therein of less than thirty thousand inhabitants; and any terminal point or any other point or part of any such roads so constructed or in process of construction shall be within five or less miles of the boundary line of such township or townships, or of any constructed free gravel, stone or other macadamized road, or any street in said township or townships (including towns and cities of less than thirty thousand, situate in any such township or townships as part of the township), but shall not reach such township or townships boundary or such other free gravel, stone or other macadamized road or street; then in such case, the Board of Commissioners of any such county, upon the petition of fifty freehold voters, and in all townships that have less than one hundred freehold voters a majority of said voters, including therein towns and cities of less than thirty thousand inhabitants, and the giving of notice, as hereinafter required, shall at their next regular term or session after the giving of such notice, proceed to consider such petition, and if they find the same to be sufficient and in compliance with the provisions of this act they may proceed at once, as hereinafter provided for, to have any such free gravel, stone or other macadamized road constructed and completed, over and upon any then existing public highway, to the township line of the township wherein it is located, or to connect with any other completed free gravel, stone or other macadamized road or street in such township or townships, or any town or city of less than thirty thousand inhabitants forming a part of such township or townships. The provisions of this section so far as applicable may be invoked for and may apply to the construction of such free gravel, stone or other macadamized road extending from any street in any city or town or from any improved road and extending for five or less miles from the limits of such city or town or improved road, whether or not

such new construction shall thereby connect with any other completed free gravel, stone or other macadamized road or street without the limits of such city or town or within any township boundary.

(Acts 1903, p. 288, Sec. 7736.)

**319e. How provisions may be applied.** When a petition has been filed, the petitioners shall indorse upon it a day in the next regular session when it will be heard by the Board. The auditor is required to give a three weeks' English newspaper notice, published in the county, or if there is no newspaper in the county, by posting notices in three public places in the township interested; also one, at the court house door giving the pendency of such petition, giving a full description of petitioned improvement, and date fixed for such hearing.

(Acts 1903, p. 288, Sec. 7737.)

**319f. Status of proposed improvement.** Upon the day set for the hearing of the petition, the Board shall proceed to consider the same, and all remonstrances filed before the Board, by freehold residents of the township interested. In case the remonstrance shall fail, the cost shall fall upon such remonstrators. The Board shall have discretionary power to order, or to refuse to order, such improvement. If the Board finds the petition sufficient and in compliance with the act, it may order the establishment and construction of the road.

The status, when so ordered shall thereupon become and be exactly the same as if the proposed improvement had been regularly petitioned for and voted upon at an election regularly held under the act of March 3, 1893, and its amendments, or under the act of March 11, 1901.

**319g. Petition—Remonstrance—Powers of Board to construct.** The further proceedings thereon shall be had according to the latter act of March 11, 1901, until said work is completed and paid for the same as if it had been included in the original petition for extension to the township line, or to some completed free gravel road constructed in the same township.

This includes the processes of advertising for bids; the appointment of viewers and engineer and their duties; letting of contracts; the issue and sale of bonds; levy and collection of taxes and all other steps and proceedings.

If it is found by the Board that the proposed improvement can be constructed for the same or less rate of expense than the original improvement, the Board is empowered to proceed to let the contract without an advertisement.

(Acts 1903, p. 288, Sec. 7738.)

**319h. Declaration of intent of the act.** The act in itself declares the intent to be for the purpose of promoting the completion of the free gravel roads constructed under the act of 1901, so to extend them to the township line or to any completed road in the township.



(Acts 1909, p. 176, Sec. 7739.)

**320. Legalizing of the earlier laws.** A general legalizing act of the earlier free gravel road laws covering all of the processes was enacted in Acts 1907, at page 428, and re-enacted, in part, in Acts 1909, at page 176.

### **HIGHWAYS, DEVIATION—TOWNSHIP LINE.**

(Acts 1909, p. 263, Sec. 7739a.)

**321a. Departure from real line account bluffs, hills, ravines, etc.** A special act, Acts 1909, page 263, was enacted, providing for the construction of free gravel roads on and along township lines, outside of cities and towns. In 1913, section one of this act was amended, Acts 1913, page 762, providing that in laying out such roads, if necessary in order to avoid bluffs, hills, ravines or other obstacles, a departure from the township line of not to exceed one-half mile is permitted, and when the road is laid out and constructed it shall be treated, paid for and kept in repair by the adjoining township in the same proportion, as if established and constructed on the real line.

(Acts 1909, p. 263, Sec. 7739b.)

**321b. Requirements in the petition—Proofs—Viewers—Engineers.** By the new act of 1909 there are but few variations from the requirements made in the act of 1905, at page 521, providing for the construction of a road through a township.

The petition must be signed by fifty adult freeholders of the townships abutting such township line, at least ten of whom shall be from each township affected.

The newspaper notice of the auditor; the posting of notices in three public places and at the court house door, are the same.

The required description of the proposed line, and presentation to the Board are the same. The auditor shall fix a date for the hearing not more than thirty-five days after the petition is filed.

The hearing; proofs; appointment of viewers and an engineer; their qualification, duties, reports; assessment of damages; right of remonstrance are the same as required in the 1905 act.

**Note:** See Sec. 310b, and following, this book.

(Acts 1909, p. 263, Sec. 7739b.)

**321c. When election to be ordered—More than one road.** The Board, however, after the matter of damages and remonstrances has been determined, and it is found that the reports and profile are in due form, shall establish and order the construction of said road without submitting the question to an election of the voters of the interested townships.

If two or more highways are described so as to form a continuous line of highway, the whole may be acted on as one. No street, in any incorporated town or city, shall be improved under the provisions of this act.

The notice to bidders, letting of contract and bond of bidder is same as the 1905 requirements.

**Note:** As to requirements of 1905 act, see Secs. 309a-320, this book.

(Acts 1909, p. 263.)

**321d. Kind of bonds to be issued.** The issuance of bonds bearing 5 per cent. per annum, payable semi-annually; the required levy to meet their semi-annual maturity, and all other proceedings are the same as the 1905 act.

The act repeals all conflicting laws.

**Note:** As to requirements of 1905 act, see Secs. 309a-320, this book.

### HIGHWAYS, DEVIATION—COUNTY LINE.

(Acts 1907, p. 363, Sec. 7740.)

**322a. Departure from real line account bluffs, hills, ravines, etc.** Boards of two or more counties are jointly empowered to construct free gravel roads on and along county lines; and in the necessity by reason of bluffs, hills, ravines or other obstacles may depart from the boundary line a distance not exceeding one-half mile; and when so laid out and improved shall be considered, paid for and kept in repair the same and in same proportions as if they were on the real line dividing such counties.

(Acts 1907, p. 363, Sec. 7741.)

**322b. Joint Board meeting—Petition—Viewers and engineer.** When a petition signed by seventy-five adult resident freeholders of the abutting townships to a county line, which is desired to be improved, at least ten of whom are required to be from each of the townships affected, is presented to the Board, it shall make an entry and order fixing the day, when such Board shall meet the Boards of the adjoining county in a joint session at the auditor's office or commissioners' room in the county where the petition is filed.

The purpose of such joint session is to select viewers and a surveyor or engineer.

The first Board shall direct that a five days' notice be given by the auditor to the Board of the adjoining county, of the presentation of such petition and of time and place of such joint session.

(Acts 1907, p. 363, Sec. 7742.)

**322c. Facts necessary in petition—More than one petition—Affidavits.** The petitions shall give a general description, setting forth the beginning, course and termination of the highway sought to be laid out and improved, together with a recommendation of the kind of improvement desired.

Separate petitions may be filed asking for improvement of sections of such highways which connect this proposed highway with free gravel roads at either end of all the roads described. The Board shall

consider all of such petitions as one petition asking for the improvement of the whole line of road as described and connected, as if there had been but one petition for the whole line.

An affidavit of a freeholder of one of the abutting townships, stating that such 75 signers are adult freeholders of such townships, and not less than ten are from each township, is required to be filed with the petition.

(Acts 1907, p. 363, Sec. 7743.)

**322d. Auditor's duties—Service by other auditor.** The auditor is required to transmit his certified copy of such petition to the auditor of the adjoining county, including names thereon and the proof.

This must be served on the members of the Board of the adjoining county by its auditor, at once, by calling them together, and delivering such certified copy, which shall be made a matter of record.

(Acts 1907, p. 363, Sec. 7744.)

**322e. Requirements and duties of viewer and engineer.** At the fixed time and place, the Board in joint session, and by a concurrent order, shall select two disinterested freeholders, each of whom shall reside in different counties, and not resident or owners of taxable property in any interested township, and shall likewise select a competent surveyor or engineer, who with the two freeholders shall be viewers, who are to be notified by the auditor of the county where the petition is pending.

The act covers the duties of such viewers and engineer as to their being qualified by taking an oath; to proceed with necessary assistants, to make the view and location; determine its public utility; its width; to make profile of the grade; determine quality and depth of gravel or other material; and make estimate of the cost of construction of the proposed road, bridges to be built by townships, culverts, drainage and other things necessary for its completion, the duties being similar in all things to those provided for free gravel roads which are built wholly in one county.

(Section 7744.)

**322f. Requirements and duties of boards at joint meeting.** Viewers are not required to assess damages to any person except as provided by section 69 of the Act of 1905, at page 553, which shall apply. (See Sec. 310g, this book.)

The viewers are required to make reports in duplicate, and file one with the auditor of each county immediately on completing this work. The time for filing such reports shall have been fixed at the joint session of the Boards.

The reports shall embrace the required matters of public utility, length, plans, plats, profiles, estimated costs and the damages assessed.

If necessary, the Board, before which the petition was filed, may extend, not to exceed thirty days, time to viewers to make their report. The auditor of this county is required to attend all joint sessions and enter its proceedings, furnishing without delay, a certified copy of such record to the auditor of the other county.

(Acts 1907, p. 363, Sec. 7745.)

**322g. Engineer's report—Remonstrance—**When more than one remonstrance. Upon filing the viewers' and engineer's report, the auditors of each county shall jointly agree upon a fixed date for a joint session of the Boards at the auditor's office or commissioners' rooms of the petitioning county.

Such auditors, in his own county, shall then give notice of the pendency of such petition to the taxpayers of the interested townships, by a newspaper publication, published within the county, mentioning the joint meeting of the Board; a brief description of the road and improvement; and the right of remonstrance.

Any resident taxpayer, affected, may remonstrate at any time up to 10 o'clock a. m. of the day of hearing, and when more than one remonstrance is filed they shall be consolidated.

The Boards shall try the issues, and when a majority find for the remonstrators, that the highway will not be of public utility, they shall then dismiss the petition at the cost of the petitioners; otherwise, at the cost of remonstrators.

(Acts 1907, p. 363, Sec. 7746.)

**322h. Joint Board appoints superintendent—Construction of work ordered.** If the Boards in joint session, find by majority vote of all members, that the proposed improvement is of public utility, and that all claims for damages have been fixed, the auditor shall be directed to advertise for bids, in line as provided when a free gravel road is to be constructed within one county. At such joint meeting the Boards shall appoint a superintendent of construction for the improvement.

The auditor shall fix a day for such letting, notifying his Board, and likewise give a ten days' notice to the other Boards.

Newspaper notice of letting shall be published for twenty days in each county interested in the improvement, and all printers' bills must be filed with the auditor before such letting, with their proof, else no fee shall be taxed for any one failing.

(Section 7746.)

**322i. Local teams and labor to be given preference—Exceptions.** Contractors or superintendents shall equitably employ local labor and teams unless it costs more in some townships than others, in which case such labor and teams may be employed wherever the same may be had the cheaper.

(Section 7747.)

**322j. All things done under act 1905.** The entire improvement, in all things, shall be done under the act approved March 8, 1905, page 521.

**Note:** See Secs. 7711 to 7739 Burns R. S., Secs. 309a-320, this book.



**HIGHWAYS—COUNTY LINE—ASSESSMENTS.**

(Acts 1907, p. 363, Sec. 7748.)

**322k. Expenses, how proportioned — Assessments — Bonds — Payments to first petitioning county.** The said Board shall fix in the order making and establishing said improvement the ratio or part of such road or roads belonging to and assessable against each of the several townships sought to be taxed for such improvement, by giving and assessing to each township such proportion of such road or roads to be improved, counting one-half the road to the township or townships on either side thereof, and the Boards of Commissioners of the several counties interested and so notified, shall, upon notice from the auditor of the county where said proceedings are pending, that the contract has been let, stating the amount of the contract price, and the amount of all other costs, damages allowed, and expenses of every kind necessary to complete such improvement, including all costs of engineer, viewers, publication of notices, help of engineer and viewers in surveying, superintendent of construction, and the fees and charges of the auditor of the county so constructing the improvements, which fees and charges shall be the same as in other like work in his office and shall belong to him individually, except that portion chargeable to his own county, which shall belong to it, but each county shall pay for the costs of printing its own bonds and the selling of same; issue the bonds of its county of a sum equal to the share or portion as assessed and apportioned to each township in its county, as so made and apportioned in the original order for the making of the improvements as the share of roads in each county bears to the whole line of roads, plus the costs of printing and selling such bonds, and upon the sale of such bonds, the proceeds shall be remitted to the auditor of the county where the petition is filed, and by him charged upon his books and then it shall be his duty to pay the same into the treasurer of his county, to be held by him as a special fund for the making of such improvements, and paid out upon warrants drawn by such auditor as ordered by the Board of Commissioners of the county before whom the petition was filed except the final payment which shall be upon the joint order of said Board. It is hereby made the duty of the several county treasurers of this state to sell all such bonds so issued, and to remit the proceeds to the auditor of the county where said petition is filed.

(Acts 1907, p. 363, Sec. 7747.)

**322l. Special tax levy to pay bonds and interest.** A special levy shall be made, annually, to provide for the payment of the maturing bonds and interest, upon each township, including towns and cities under a population of 30,000.

Such levy upon the property of each township shall be in the same ratio and proportion as its portion of the road bears to the portion of the others, as the same adjoins each township in the respective counties.

(Acts 1907, p. 363, Sec. 7750.)

**322m. Procedure of joint Board upon completion—Reception of improvement—Maintenance.** When the road is completed according to contract, plans and specifications, the engineer in charge of the improvement shall notify the auditor of each county of such fact, when the auditor of the petitioning county shall appoint a time and place, not over twenty days from the engineer's notice, for a joint meeting of the different Boards to inspect such road, with the assistance and advice of such engineer.

If the Boards deem that the improvement has been perfectly performed, they shall accept it and make an entry of record of accepting and receiving same, and allow a payment in settlement of the contract.

Should the Boards find that the work has not been properly done, according to plans and specifications, they shall summon such contractor and direct him to complete the work by a certain fixed date adjourning such joint meeting until that time.

The Board shall reassemble on the day fixed, for the purpose of accepting and receiving the work.

Before finally adjourning their joint sessions the improved highway shall be apportioned between the several counties for future maintenance of the road, which shall be done as free gravel roads are maintained.

(Acts 1907, p. 363, Sec. 7751.)

**322n. Further joint sessions when necessary.** The act provides for joint meetings of the Boards as often as is necessary to carry out the provisions of the act. A five-day notice to the interested Boards is required and their joint sessions may be adjourned from day to day or to any other period of time.

(Acts 1907, p. 363, Sec. 7752.)

**322o. When auditor casts vote.** In joint sessions of the Boards, on the question of public utility, when there is a tie vote, and the joint Boards can not decide the question, the auditor of the petitioning county shall cast the deciding vote.

## HIGHWAYS—FRANCHISE TO IMPROVE.

(Acts 1881 S. p. 542, Sec. 7799.)

**323a. Abutting owner's right to petition.** Owners of real estate abutting on any highway may petition the Board to grant right of way for the improvement of such highway.

(Section 7800.)

**323b. Board's action on petition.** When such petition is presented to the Board, signed by persons of lawful age and who are the owners of more than half of the abutting real estate as well as a majority of such owners, the Board may grant right of way for such improvement.

(Acts 1881 S. p. 542, Sec. 7802.)

**323c. With consent of Board, may build.** When such right has been granted by the Board for the improvement of any highway in this state,

the petitioners and others interested may form themselves into a corporation, under the laws of the state to build either a free or toll road.

A corporation thus formed shall have all the rights and privileges of similar corporations of the state.

### HIGHWAYS, IN MORE THAN ONE COUNTY.

(Acts 1913, p. 705, Sec. 7669.)

**324. How viewers shall be appointed by each county—Qualifications and requirements.** When the petition is presented for a location, change or vacation of a highway, extending into two or more counties, or upon a county line, dividing two or more counties, jurisdiction as to all the proceedings shall obtain to the Board of the county where the petition is first filed, and shall be similar to the proceedings outlined for one county as far as practicable, except that the petition shall be signed by twenty-four freeholders of the counties interested, six of whom shall reside in the neighborhood of the proposed location, change or vacation, three of whom shall reside in either county.

The set of viewers, or reviewers shall be equal to the number of counties to be affected, and one to be appointed by the Board of each county.

For further information reference should be had to the provisions of the act.

(Acts 1905, p. 521, Sec. 7670.)

**325. When dispute exists as to working roads—Viewers and surveyors—Their duties.** Section 22 of the act of 1905, provides for working highways located on county lines which have not been worked, by either county, for a stated time on account of difference of opinion as to whose duty it was to work such highway.

This matter is brought to the Board by petition of 12 freeholders setting forth those facts.

The Board shall thereupon appoint two viewers together with the surveyor to perform the duties required. The auditor shall, immediately, through the auditor of the other county give notice to the Board of the bordering county of the filing of the petition with its purport, when the Board of bordering county shall appoint two freeholders, and the four persons thus appointed, together with such surveyor shall meet at a time and place fixed by the first Board; after being officially sworn, these viewers shall proceed carefully to examine the condition of the highway in dispute, and if practicable, shall locate the same on the county line, one-half in each county.

The viewers shall make report, in duplicate, giving a description of the highway, with metes and bounds, showing its beginning, termination and width, and furnish each county with such report, to be recorded as other highways are.

In case the second county fails to appoint viewers as required, the two viewers and the surveyor shall proceed to make the view and make report, discharging the duties of the four viewers, as contemplated, which will have effect in law the same as if the four viewers had acted.

**HIGHWAYS—RURAL MAIL ROUTES.**

(Acts 1913, p. 869, Sec. 7775.)

**326. Special act 1913 concerning emergency fund.** In addition to their other duties, Boards of Commissioners, township trustees and road officers, are required to keep in repair and passable condition all highways along or on which United States rural free delivery routes are established. Township trustees are required to set aside at least five per centum of their road fund received each year as an emergency fund for such rural route highways.

**HIGHWAYS, ON STATE LINES.**

(Acts 1913, p. 938, Sec. 7671.)

**327. Procedure in construction and keeping in repair—General plan of co-operation—Superintendent.** Section 23, of the act of 1905, at page 521, has been amended, 1913, at page 938, to become operative only when an adjoining state shall enact a co-operative law.

It provides for the laying out, construction, improvement, grading, graveling or macadamizing of a public highway on or along the line dividing Indiana and an adjoining state.

The general plan of operation is by the appointment of highway superintendent by the Board joining with the proper authorities of the county adjoining in the other state. The term of office is two years, and he is required to file an acceptable bond in the penal sum of not less than \$200. His compensation is fixed at \$2.50 per day. He is subject to removal at any time. He shall be a qualified voter of the county from whence appointed. He shall have charge and supervision of all work in connection with such highway, contemplated in the act, and shall be at all times under the direction of the respective Boards or proper authorities. The respective Boards are authorized jointly to enter into contracts for the construction and improvement of such highways and shall pay, each, its equitable and just share of cost.

Such improvements shall be made on the petition of landowners under the existing laws of Indiana, and when such highway is constructed shall be perpetually kept in repair by the provisions of the act in just proportions by the adjoining counties, and shall be free from toll.

**HIGHWAYS—FENCES.**

(Acts 1895, p. 18, Sec. 7797.)

**328. Deviation from old road—When right to fence—When no right to fence.** When, in the construction of free gravel roads, the line of location has been deviated from the old highway, such abandoned portions shall be deemed as being vacated without further proceedings, and land owners shall have the right to fence same.

Where such fence would deprive any person, owning land along such old road, from access to his land, the provisions of the act do not apply.



(Acts 1867, p. 133, Sec. 7796.)

**329. Abandonment of old road by road company—Vacation.** In case that a road company, which has constructed its road by the consent of the Board, shall abandon such highway for any distance not over one-half mile, which lies on the land of one person, only, and the distance of public travel will not, thereby, be increased more than one-eighth of a mile; and such abandonment by such road company has had the consent of the landowner, there being no obstruction to any other highway, such abandoned portions shall be vacated.

#### HIGHWAYS—WIDTH.

(Acts 1 R. S. 1852, p. 307, Sec. 7794.)

**330. Minimum width 30 feet.** No county road shall be less than 30 feet in width, and the order for laying out any highway shall specify its width.

**Note:** Also see Sec. 297, this book.

**331. The several statutory provisions as to width.**

**Note:** The following shows the widths of county roads as authorized by the several acts:

Act January 31, 1824, Sec. 4, "the Board of Commissioners to order the said road to be opened a necessary width, not exceeding thirty-three feet."

Act February 10, 1831, Sec. 6, "the said board shall \* \* \* order the said road to be opened and repaired a necessary width, not exceeding forty feet."

Act February 17, 1838, Sec. 6, "to be opened necessary width not exceeding forty feet."

R. S. 1843, ch. 16, Sec. 30, "All public highways laid out by authority of the county commissioners, shall not be less than forty feet wide, and all private roads shall not be more than thirty feet wide."

Act June 17, 1852, Sec. 39, "No county road shall be less than thirty feet wide, and no township road shall be less than twenty-five feet wide."

**Note:** The act of May 6, 1852, provided for the election of three trustees in each civil township. Amongst other duties they were authorized to open, change and vacate township roads within such township.

The act of February 18, 1859, superseded the 1852 law, and provided that but one township trustee should be elected, without any authority touching opening, change or vacation of roads.

#### HISTORICAL SOCIETIES.

(Acts 1901, p. 542, Sec. 4998.)

**332a. Procedure and authority for Board to provide room and vault.** Where there is organized, in any county, a historical society for the purpose of collecting data for and preserving state and county history and biography, which has held, at least, one meeting in each year, at which papers have been read and addresses been made in the presence of the public, upon local and state matters of history, for five consecutive years, upon petition of its president and secretary, and not less than fifty voters and taxpayers of the county, to the Board, at a regular session, and by the Board referred to the county council at a

regular or called session, with estimates and recommendations, the council may appropriate any sum not to exceed \$5,000, for the construction and furnishing of rooms and fire-proof vaults, for meetings, and the preservation of records and historical papers of such society.

(Acts 1901, p. 542, Sec. 4999.)

**332b. When society surrenders rights—Failure to hold meeting.** Should such society fail, or voluntarily surrender its right, or fail to hold its meetings for two consecutive years, all its papers and property shall become the property of the county, but duplicate copies shall be allowed to be made of historical or biographical papers by its contributor.

(Section 5000.)

**332c. Joint use of rooms and vaults—Other associations—When abandoned.** Joint use of such rooms and vaults may be allowed to any other historical association or biological branch by the Board, but appropriations shall obtain only to one set of rooms and vaults.

(Section 5001.)

**332d. Board has voice in control of rooms.** Control of such rooms shall be held jointly by such society and the Board, but all printing and similar expenses shall be paid by the society.

(Acts 1901, p. 542, Sec. 5002.)

**332e. Voluntary surrender—Board may grant to others.** In case of the voluntary surrender of the occupancy of the rooms, building and vaults, by such historical society, the Board may grant the use of same to any other society similarly organized, preference however being given to the reorganization of the original society.

#### HOME FOR FRIENDLESS WOMEN.

(Acts 1867, p. 228, Sec. 10038.)

**333a. Where established—Board may use for restriction of convicted women or girls—To be open at all times for inspection of the Board.** Where there has been a home for friendless women established, private or otherwise, in any city, the Board may make provision for the restraint in such home of women and girls, who are convicted by any courts for a violation of law, provided the Board deems the home safe for imprisonment.

(Section 10040.)

**333b. Inspection.** Any such home shall, at all reasonable hours, be open for the inspection by the Board or any proper authority.

#### HOSPITALS.

(Acts 1913, p. 742, Sec. 3776a.)

**334. Act 1913 authorizes establishment and maintenance of—Petition—Trustees—Tax levies.** This act enables counties to establish and maintain public hospitals, upon a petition to the Board signed by 200

resident freeholders of such county, 150 of whom shall not be residents of the town or city where such proposed hospital is to be located.

The Board may levy a tax, not to exceed 20 cents on the \$100, and may issue bonds for the purchase of the site for such hospital buildings. When the hospital has been established, it becomes the duty of the Board to appoint five trustees to serve until the next general election, when trustees of the hospital shall be elected the same as other officers, none of whom shall be practicing physicians.

All vacancies shall be filled by the Board of County Commissioners.

To anticipate the collection of the tax levied, for such purpose, the Board is authorized to issue 20-year bonds of the county bearing 5 per cent. interest, payable annually or semi-annually, limited to \$100,000.

The Board is given the power to enter condemnation proceedings to secure a location for such hospital.

The Board may determine who are charity patients, and may provide, in the sanitarium department, for the care of indigent tuberculosis patients.

#### HOSPITAL—MATERNITY.

(Acts 1909, p. 369, Sec. 3678j.)

**335. When county shall pay expense for child and mother.** The act regulating maternity hospitals provides, by section 10, for the payment by the county of the necessary expenses for the confinement of the mother and care of the illegitimate child. Unless otherwise paid within four months, such expenses are collectible from the county at the rate of \$1 per day for the mother and 35 cents per day for the illegitimate child.

#### HOSPITALS—TUBERCULOSIS.

(Acts 1913, p. 474, Sec. 3776t.)

**336. When Boards may establish—Donations received—Purchase property—How managed.** Boards of any county, in the state, shall under the provisions of the act, 1913, at page 474, have power to establish a county hospital for the care and treatment of persons suffering from the disease known as tuberculosis. This is purely a local matter and must not be confused with the state institution, the tuberculosis hospital at Rockville, Parke County, where there is apportioned to each county an equitable right to admit patients. See section 58, this book.

This act gives the Board, when it has voted to establish such hospital, power to purchase or lease property; to acquire such real property, and easements thereon by condemnation proceedings; to erect all necessary buildings or improve and alter existing buildings, subject to the approval of the state board of health; with the approval of the council, to assess, levy and collect such necessary sums of money for lands, buildings and improvements and maintenance of same; to borrow money for such erection and purchase of site and issue the county obligations therefor; to appoint a board of managers for such institution; and to accept and hold in trust any devise, gift, bequest or donation to be applied to the benefit of such county tuberculosis hospital.

The hospital is managed by a board of managers consisting of four citizens of the county, two of whom shall be practicing physicians, and without compensation except their actual traveling and necessary expenses.

The act gives the duties of such board of managers; duties of the superintendent; how patients are admitted; when patients may become a charge upon the county, and other matters relating to the management of the institution.

When such hospital is established in connection with, or on the grounds of the county asylum, the Board may, as a part of their duties perform the duties of the board of trustees, or appoint a board of managers.

Two or more counties may join together in the establishment and maintenance of a tuberculosis hospital, its cost of establishment and its maintenance being apportioned on the ratios of the taxable property of such counties, and admissions on the ratios of their several population.

#### IMPEACHMENT OF OFFICERS.

(Acts 1897, p. 278, Sec. 9648.)

**337. Procedure therein.** An accusation against any officer may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

(Acts 1899, p. 188, Sec. 9663.)

**338. Procedure therein for felony.** When any county or other public officer shall be convicted of felony, the office held by him shall be vacated by such judgment, and the vacancy thus caused shall be immediately filled by appointment as provided by law.

Provided that in case of appeal to the appellate or supreme courts, such office shall not be vacated pending such appeal.

See also sections 357, 358, herein.

#### INDIANA BOYS' SCHOOL.

(Acts 1883, p. 19, Sec. 10019.)

**339. Portion of expense of keep paid by county.** The board of control of the Indiana boys' school is required to make an estimate of the keep of boys committed to that institution, one-half of which is chargeable to the county from whence the boy is committed together with the whole cost of transportation.

(Acts 1867, p. 137, Sec. 10020.)

**340. Procedure by which county is released from payment.** No order shall be made, charging any county with one-half of the cost of keeping in the institution of any infant committed by his or her parent or guardian, unless a certificate, in writing, is first produced, signed by the president of the Board of Commissioners of such county, or by the auditor of such county, setting forth that the case is one in which the expenses should be charged to the state and county and setting forth the reasons therefor.



**INDIANA GIRLS' SCHOOL.**

(Acts 1869, S. p. 61, Sec. 9973.)

**341. County pays expense when parent and guardian unable.** Under the provisions of act approved May 13, 1869, one-half of the expenses of the clothing and subsistence of an infant committed to the Indiana girls' school, is chargeable to the county from whence the infant is committed, except in cases where parent or guardian is able to pay.

(Section 9974.)

**342. Superintendent's certificate required to make claim.** A certified statement of such expenses from the superintendent of the school shall be transmitted to the auditor through the treasurer of state which the Board shall pay.

**INDIANA STATE SOLDIERS' HOME.**

(Acts 1895, p. 40, Sec. 10085.)

**343. Boards authorized to erect cottages upon grounds at.** By an act approved February 25, 1895, the Indiana state soldiers' home was established near Lafayette. The act also provided that the Boards of the several counties of this state shall have authority to make appropriations out of the general funds of the county for the purpose of erecting a cottage or cottages upon the grounds of the home.

**INDIANA UNIVERSITY.**

(Acts 1 R. S. 1852, p. 504, Sec. 6725.)

**344. Free tuition—Two students from each county—Board's selection.** The trustees of the Indiana university shall provide for the tuition, free of charge, of two students from each county of the state, to be selected by the Board.

**INDIANA UNIVERSITY FUND.**

(Acts 1897, p. 117, Sec. 6770.)

**345. County liable for "Permanent Endowment Fund."** Under an act of 1897, the auditor of state, who had charge of the Indiana university fund, commonly called the "Permanent Endowment Fund", was directed to allot same to the several counties of the state, based upon the enumeration for legislative apportionment of 1895.

(Section 6771.)

**346. Fund loaned by auditor same as school fund.** This fund is loaned by the county auditor in the same manner, terms, conditions and restrictions, and same limitations as the common school funds.

Counties are made liable for the principal and interest the same as for the common school funds.

**INSPECTORS.**

(Acts 1 R. S. 1852, p. 340, Sec. 7911.)

**347. Inspection of salt—Pork—Beef—Flour—Hay.** Boards may appoint inspectors to inspect salt, beef, pork, flour and hay.

The inspector shall serve four years unless sooner removed. His fees are set out in the act.

(Section 7918.)

**348. Boards may authorize purchase of hay scales.** Boards may authorize inspectors of hay to procure suitable hay scales, at the expense of the county.

(Section 7919.)

**349. Inspector to give satisfactory bond.** Inspectors are required to give bond to the satisfaction of the Board and to file the same in office of county clerk, and to take an oath of office.

(Acts 1 R. S. 1852, p. 340, Sec. 7923.)

**350. Board makes necessary regulations.** The Board may make such further regulations in regard to inspectors as may seem necessary.

**INTERURBAN RAILROADS.**

(Acts 1903, p. 233, Sec. 5465.)

**351. General law for public aid to railroads extended.** Under the law of 1903, all acts relative to the public aid to railroads, were extended to and held to include every kind of street railroad, suburban and interurban railroads, irrespective of construction or of whatever power employed.

(Acts 1879, S. p. 175, Sec. 5671.)

**352. To extend street railroads must have consent of Board.** Any street or horse-car railway company organized under the laws of the state, within any of the incorporated towns or cities, desiring to extend such road beyond the corporate limits, on any state or county road; or any other company organized under such laws for similar purposes; or any person desiring to build a horse or street railway outside of any city on a public highway, may do so after procuring the consent of the Board.

(Acts 191, p. 461, Sec. 5675.)

**353. Must have permission of Board to change grade of highway.** The powers given to interurban companies using a public highway, to make a change in the grade or the line of such highway, must be done under the direction and by the permission of the Board.

(Acts 1909, p. 199, Sec. 5696-a.)

**354. Electric motive power may be used.** Interurban companies and street railroad companies, with the consent of the common council, for within a city, and the Board, for without the city, may use electricity for motive power. Provided, that in giving such consent the common

council, or Board, may do so upon such terms and conditions as they may see fit to impose.

(Acts 1905, p. 521, Sec. 7684.)

**355. Conditions under which Boards grant rights of way on highways.** Boards are authorized to give their consent to the use of the public highways as rights of way to interurban companies, duly organized under the laws of this state, or to any street railroad company desiring to extend outside of the city limits, or to any company desiring to build an electric railway outside the city.

Any company accepting such consent must observe the conditions as to location, track and road-bed, and perform such other reasonable terms as may be fixed by the Board granting such consent at any time afterwards.

(Section 7684.)

**356. Mention of public franchise act of 1913.** Attention is here directed to the "public franchise" act of 1913, at page 286, section 431 herein.

### INTOXICATION.

(Acts 1875, p. 91, Sec. 9605.)

**357. When public officer may be impeached for.** Any person holding an office under the constitution or laws of this state, becoming voluntarily intoxicated within the business hours of his office, or shall be in the habit of becoming intoxicated by the use of intoxicating liquors, shall forfeit his office and be removed therefrom, upon complaint, filed in the circuit court of the county in which he resides, by any citizen of the state, alleging that he is a citizen, and giving the name of person complained of, with full particulars of the offense. The clerk of said court shall docket the cause, and issue summons for the defendant as in other causes. If found guilty upon trial, such officer shall be adjudged to have forfeited his office, and it shall be adjudged vacant.

### INTOXICATED OFFICER.

(Acts 1905, p. 584, Sec. 2419.)

**358. Penalty for, during business hours.** Whoever, holding an office under the constitution and laws of the state, becomes or is intoxicated during the business hours of his office, on conviction shall be fined from \$10 to \$100, and an imprisonment in the county jail may be added.

Upon a second conviction he may be deprived of his office by the judgment of the proper circuit court.

### INTOXICATING LIQUORS—LOCAL OPTION.

(Acts 1911, p. 8.)

**359. Features of law 1911.** Whenever a petition signed by 20 per cent. of the qualified voters of any incorporated city, or any township not containing an incorporated city, or the territory embraced within any township outside of and exclusive of the territorial limits

of the city, is presented to the Board asking for a special election as to whether or not the sale of intoxicating liquors as a beverage shall be prohibited in such territory, the Board shall order a special election, on a day not less than twenty nor more than thirty days thereafter. The act gives a form for such petition.

The Board shall appoint election officers to be comprised of opposing parties, and a special ballot shall be used. If a majority of the legal votes cast at such election shall be in favor of prohibiting the sale of intoxicating liquors as a beverage in such territory, it shall be unlawful for the Board to hear or consider an application for a license to sell, and the Board shall not have the power to grant license to any person, until at a subsequent election a majority of the voters of such territory shall vote against prohibition.

Should the result of such election be in favor of prohibition, then after ninety days from the date of the election all licenses for the sale of intoxicating liquors which have been granted in such territory, shall be null and void, and the holder thereof shall be liable for any sale of liquors the same as if a license had never been issued to him.

When the holder of such license shall surrender the same, within such limit of ninety days, the county, town or city issuing such license shall refund the unearned proportion of the license fee paid by him.

Section 8 of the original act, 1908, at page 7, which forbids a subsequent election for the period of two years, is the only one in force, all others having been amended by the act of 1911 at page 8.

**Note:** This act is a modification of the "Hanly" act of 1908.

The essential features of this act are covered and embraced under the provisions of Secs. 8316 to 8323c Burns R. S. See Secs. 360a-q of this book.

### INTOXICATING LIQUORS—LOCAL OPTION—ELECTION.

(Acts 1911, p. 363, Secs. 8316 to 8323c.)

**360a.** What shall be contained in the petition for an election—Order for an election. Under act of 1911, page 363, provision is made for special elections to determine, whether or not, the sale of intoxicating liquors shall be prohibited in incorporated cities, in townships not containing an incorporated city, or territory in civil townships exclusive of all incorporated cities. It is required that a petition, which is substantially outlined in the act, shall be filed with the county auditor who shall present same to the Board at its next session. The Board shall fix a date for such election not less than twenty nor more than thirty days thereafter, it being required that a ten days' notice of such election shall be given as is by law now provided for general elections.

**Note:** The act defines the word "township" as used in the act to mean a civil township.

**360b.** Petition required to contain 20 per cent. of voters. Such petition, to be sufficient, must contain the signatures of 20 per cent. of the qualified voters of the territory in which election is prayed for.

**360c.** How total number of votes shall be determined—Challenge in writing—Poll-takers—Correction of poll. The numbers of electors shall be determined as follows; the aggregate vote cast for mayor at



the last general city election, when in case of an incorporated city; the aggregate vote for secretary of state in the case of a civil township not containing an incorporated city; the difference of the aggregate votes, as above, between the vote for secretary of state and the mayor, in the case of a civil township, excluding an incorporated city; and in case this difference can not be ascertained by such last method, the Board shall appoint a sufficient number of qualified electors as poll-takers to speedily perform the duties of making a complete poll of all qualified electors of such territory, as of the date of filing of such petition. It is required that such poll-takers shall be first sworn to faithfully and honestly perform their duty; such poll, when returned, to show the name and address and place of residence of every qualified voter, as of such date, within such territory. The poll is subject to challenge in writing, which shall summarily be heard by the Board.

Omitted names shall be added and illegal polls shall be dropped from such poll.

**360d. Compensation of poll-taker—Petition for poll taking.** Petition for such poll may be filed prior to filing the petition for an election. If such petition for a poll is signed by ten electors of the township, the Board must then order such poll taken.

The compensation of poll-takers is \$3 per day each, which shall be paid by the Board without appropriation being first made therefor.

**360e. When petition is filed, names cannot be added or removed.** After such petition for election is filed, no voter shall be permitted to sign his name thereto, or to withdraw his name therefrom.

**360f. Board shall appoint election officers.** When such election is ordered the Board shall fix and designate the voting places and precincts in such territory; and shall appoint on the election board one judge and clerk, known to be in favor of prohibiting the sale of liquors in such territory, and one judge and clerk opposed to such prohibition.

**360g. Pending proceedings, Board cannot issue license.** It is required that the Board, pending these proceedings, shall not issue any new license to sell intoxicating liquors in such territory until such election is held, and then only in the event that such territory votes against the prohibition of such sale.

**360h. Form of "yes" and "no" prescribed.** The form of the "yes" and "no" ballot is prescribed in the act.

**360i. Election Commissioners—Qualifications—Other duties—County Auditor.** The Board shall appoint two resident freeholders of such territory in which the election is to be held, one known to be in favor of and the other opposing such prohibition, who together with the county auditor shall compose the election commissioners. This board prepares and distributes the ballots, and on the day following the election, meets at 10 a. m. at the office of the county auditor, when they shall canvass the returns and certify the result to the Board of Commissioners.

**360j. Returns of election—Board's action.** Such certificate shall within five days be filed with the county auditor, and the Board shall make and enter an order at its next regular session declaring the result of such election.

**360k. If vote in favor of Prohibition, Board's restriction as to issuing a license—**Subsequent election cannot be held until expiration of two years. If such vote shall be in favor of prohibition, the Board can not consider an application for license, or renewal, to sell in such territory until at a subsequent election a majority of the legal voters there-in shall vote against prohibition. No subsequent election can be held under the act until the expiration of two years, at least, from the last preceding election.

**360l. When election is in favor of Prohibition—Of existing license null and void.** If such election is declared in favor of prohibition, then after ninety days from the date of holding such election, all li-censes and their renewals granted in said territory, shall be null and void, and the holders shall be liable for the sale of any liquors, as if licenses had never been granted.

**360m. Surrender of license within 90 days—Proportionate amount of license fee returned—Status of renewal license.** If the holder of any such license or renewal, thus made void, shall surrender the same within such ninety days, the authority issuing same shall refund to such holder an amount proportionate with the unexpired time for which the license has been paid.

For the purposes of this act, a renewal of a license shall be con-sidered as a new license, and all renewals shall be subject to the pro-visions of the act.

**360n. Status of pending matters when election declared against Prohibition.** In the event that the election obtains against prohibition in such territory, it shall not affect, change or alter the legal effect of any order, judgment or remonstrance, but they shall remain in full force and effect according to the provisions of the statute under which such remonstrance was filed. In such case the legal voters of any township or ward may remonstrate against the granting of a license to sell intoxicating liquors as now provided by law, the same as if no election had been held.

**360o. Act a supplemental one—Not interfering with any other law.** This act does not repeal or modify the "Nicholson" law of 1895, or the "Moore" remonstrance law of 1905, but shall be considered as an addi-tional law and supplemental to all laws which prohibit the sale of in-toxicating liquors.

**360p. How county advances expenses of election—Remuneration.** All expenses shall be paid, as in general elections, by the Board, when it shall become the duty of the county auditor to file an itemized state-ment of such expenses, with the city clerk, or controller, or township trustee, and such expenses shall be paid out of the general fund of such city or township, without any specific appropriation being made therefor.

**360q. Board may consolidate voting precincts in county election.** The Board is authorized to consolidate two voting precincts, or fraction thereof into one precinct, when an election is held in any township.

**Note:** Jay v. O'Donnell, 178 Ind. 282. Penalties of gen-eral election laws apply to local option elections. State v. Shanks, 178 Ind. 330.

**INTOXICATING LIQUORS—REMONSTRANCE.**

(Acts 1911, p. 244, Sec. 8323d to 8323h-l.)

**361a. General duties of Board embraced under the Proctor Remonstrance Law.** Under the act, 1911, at page 244, generally known as the "Proctor Remonstrance Law," the duties of the Board relate to the granting of a new license; a renewal of a license; the transfer of a license; the suspension of a license, and the revocation of a license; also with such remonstrances as may be filed by a voter of the township whence an application is filed for a new license, renewal, or transfer of a license, and change of a designated agent for a hotel corporation.

The Board's duty also relates to the hearing of a verified complaint filed by a voter of city, town or township containing the statement of any fact constituting grounds for revocation or suspension of a license.

**361b. Twenty-day publication by applicant—How made when no newspaper.** It is required that an applicant for a new license; a renewal of license; change of location; sale or transfer of license to another person; change of agent of a hotel corporation, or for a license to sell at wholesale, shall give notice to the citizens of the city, town or township in which such applicant desires to sell, by publication in a newspaper of general circulation in such city, town or township in which he applies to sell, for, at least, 20 days before the meeting of the Board at which such application shall be made.

If there is no such newspaper published as above mentioned, then the applicant may give notice in any newspaper published in the county; if none is printed in the county, then by posting up notices in ten of the most public places in such city, town or township.

Such notice must state the exact location of the premises in which the applicant desires to sell, and when a hotel corporation is an applicant, the name of the agent who is to have control, and the general supervision, shall be given in the published notice.

**361c. QUALIFICATIONS AND REQUIREMENTS OF AN APPLICANT TO SELL.**

The application must be made in writing, and the qualifications and requirements of an applicant must be as follows:

1st. If the applicant is an individual he must be a male inhabitant over the age of 21 years, who has been a resident of the state for one year and in the city, town or township, for six months and a qualified voter, thereof, in the city, town or township, wherein he desires to sell.

2d. If a copartnership, it must be composed of male inhabitants, all of whom have resided in the state one year, and in the city, town or township for six months, wherein they desire to sell.

3d. If a hotel corporation, it shall designate its agent, who shall have control and general supervision of the sale of intoxicating liquors, who shall possess all the qualifications required of an individual licensee, and which hotel shall have twenty-five rooms, or more, used for the reception of guests.

4th. If the applicant is not a citizen of the United States, he must

have filed his declaration of becoming such, and have been a resident for 10 years, and possess all the other qualifications.

5th. The applicant must be the bona fide lessee of the premises described in his application for the time such license shall run, or be the owner of such premises.

6th. The applicant, as an individual, copartners, or agent of hotel corporation, must not be the agent or employe of any firm or corporation engaged in the manufacture or sale of any article to be sold by such applicant.

7th. The applicant, as individual, members of a firm, or agent of hotel corporation, must not be the holder of any other license for the sale of intoxicating liquors at retail.

8th. The applicant must be the actual and sole owner of the business, and no other person, firm or corporation can have any interest, directly or indirectly therein.

9th. It must be shown that such license is desired for the applicant's own use, and not for the benefit of any other person, firm or corporation.

10th. It must be shown that since the taking effect of this act (March 4, 1911), the applicant, as individual, member of copartnership, or designated agent of hotel corporation, has not directly or indirectly solicited, received or accepted, and that during the continuation of the license applied for, or any renewal thereof, will not directly or indirectly solicit, receive or accept from any person, firm or corporation engaged in the manufacture or sale of intoxicating liquors, any gift, loan of money, furniture or fixtures, or any assistance of any kind.

11th. It must be shown that the applicant as individual, each member of a copartnership or designated agent of a hotel corporation, shall be found fit to be entrusted with the sale of intoxicating liquors, of good moral character and not in the habit of becoming intoxicated.

### PROHIBITIONS.

**361d. Causes named which will prohibit Board from granting a license.** This act provides:

1st. That no license shall be granted to any person who shall have been convicted of a felony within fifteen years, prior to the hearing.

2d. That no license shall be granted to any new applicant, who, prior to the passage of this act, (March 4, 1911), has been convicted of any violation of the liquor laws, twice in any period of four years.

3d. That no renewal license shall be granted to any person who has been convicted twice in any period of two years after this act takes effect (March 4, 1911), for any offense against the liquor laws since the passage of this act.

4th. That the number of retail licenses may be granted in any city, town or township, shall not be more than one for each 500 inhabitants thereof, which number may be further limited by the Board to any number not less than one to each 1,000 inhabitants of such city or township. See Sec. 361e, this book.



5th. That no license shall be granted to conduct a saloon in any room situated within 400 feet of any school building, which school building is not within the corporate limits of any city or town.

**361e. Definition of "township"—Board fixes limitation of number of licenses—How population to be reckoned—Limit one license for 500 population, may be reduced to one for each 1,000.** The act requires that the Board shall fix the limitation of number of retail licenses, if at all, at its first meeting after the act took effect.

The word township is defined to mean a civil township containing no city, or that portion of a civil township lying without the corporate limits of any city.

In determining the number of inhabitants in any city or township in which there is no city, for the purposes of the act, the number shall be taken as being five times the greatest aggregate vote for all candidates for any office in such township or city, at the last general election held therein preceding the filing of such application for license, and the number of inhabitants in any township outside the corporate limits of any city located therein, shall be determined by the last U. S. census taken in such township preceding the filing of such application.

**361f. Applications must be in writing—What must be embraced therein—Applicants must subscribe and swear to application.** The application for license shall be in writing, and shall be filed with the county auditor, in which shall be specifically described the room in which the applicant desires to sell intoxicating liquors, and the exact location of same, and when there is more than one room in the building it shall specify the exact room which is to be in use for such sale.

The application shall also include all the material matters set forth under the heading, above "qualifications and requirements", as to individuals, partnerships and a corporation. See Sec. 361c, this book.

The application shall be subscribed and sworn to by the applicant, as an individual; each member of the firm of a copartnership; and when a hotel corporation, by its president, its secretary or treasurer, and also by the designated agent, before some officer authorized to administer oaths.

**361g. Bond \$3,500 required of each licensee, approved by auditor.** If it is found by the Board at the hearing that the applicant is entitled to such license, it shall be issued to such applicant upon such applicant giving bond payable to the State of Indiana, with at least two freehold sureties residing in the county, or an approved surety company, to be filed and approved by the county auditor. Such bond shall be in the sum of \$3,500, and conditioned that applicant will keep an orderly house; pay all fines and costs assessed against applicant, and all judgments or civil damages arising from unlawful sales.

In all cases where the bond so given is a personal one, no person shall be accepted as surety on more than one bond in force at any time.

### LICENSE FEES.

**361h. Annual license fee \$200—Obtains to county tuition fund—Privilege of liquors to be drunk on specified premises.** Upon the execution of the \$3,500 bond required and the presentation of the order of the Board granting such license, together with county treasurer's receipt for \$200, as license fee for one year, the auditor shall issue the applicant a license for the sale of intoxicating liquors, with the privilege of permitting the same to be drunk on the specified premises, for the period of time for which the license was granted.

The whole of such fee, \$200, shall be paid into the tuition fund of such county.

### WHOLESALE LIQUOR LICENSES.

**361i. License to sell wholesale—Proceedings in application—Board's determination—Annual license \$200, how distributed.** A wholesale dealer is defined as, an individual, firm, or corporation, who does not sell in less quantities than five gallons at a time.

Section 25 of the act provides that any wholesaler or manufacturer of intoxicating liquors, located and engaged in such business in any incorporated town or city where such sale is not prohibited, desiring to sell and deliver goods so manufactured or handled, as an incident to his business, may make application to the Board for license, to be issued on the order of such Board.

The notice of his application shall be given as in the case of a retail liquor license.

The Board must determine that such privilege, to be exercised by the applying wholesaler or manufacturer, is for such sales as incident to, and not as the sole or principal part of the business of the applicant.

The license fee for such wholesaler or manufacturer's license is \$200 per year, one-half to go to the tuition fund of such county, the other half to the city or town where the said business is to be conducted.

No bond is required in the case of a wholesaler or manufacturer.

### RENEWALS.

**361j. Renewal of license—Application for new license withheld until determination of renewals prior to writing of renewals—Withholding new application, when.** A license may be renewed by the Board from time to time for the period of one year, as such license, or any renewal thereof, may expire, upon the filing of an application for such renewal with the auditor of the county wherein such license was issued, at the time, and manner, and by giving notice as has herein been mentioned.

A like bond of \$3,500, and license fee of \$200, obtain to a renewal, the same as to a new license; and when a renewal has been ordered by the Board, the auditor shall issue a certificate which is of the same effect as the original license.

In all applications for license to retail intoxicating liquors, the appli-

cations for renewals shall take priority, and no application for a new license shall be heard or considered until the applications for renewals shall have been first decided.

In case of the rejection of an application for a renewal, the Board shall not act on an application for a new license, and shall not fill the place of such rejection, until the time for appeal has expired, which right of appeal the act gives to the applicant.

#### CHANGE OF LOCATION.

**361k. Change of location—Procedure of Board—Prohibition of transfer from township to city, or city to township.** Any holder of a license, or its renewal, desiring to move his place of business from one room to another, in the same city, town or township in which he is licensed, may apply to the Board for this permission.

The same newspaper notice is necessary, giving the required facts as to such locations.

If the Board shall find that the applicant is fitted as required by the act, and shall find in favor of the application, the Board shall grant such leave to transfer such applicant's license to such specified new location, upon the applicant giving bond to the State of Indiana, as before required. When the right to sell at the new place is granted, it shall cease at the former place.

No transfer shall in any case be granted from a township to a city or from a city to a township.

**Note:** It is evident that a transfer can not be made from an incorporated town to a township, or from a township to an incorporated town.—Editor.

#### SALE OR TRANSFER OF LICENSE TO ANOTHER PERSON.

**361l. Sale or transfer of license to another person—Procedure.** The holder of any license, or renewal thereof, may file with the Board a petition asking permission to sell or transfer his license, or its last renewal, to some other named person, copartnership or corporation, desiring to purchase same.

The party desiring to purchase, and have transfer of such license, is required to give the newspaper notice concerning such deal, giving facts as to location and license sought to be purchased, and shall apply to the Board in writing.

The Board if it determines that such applicant is fitted to sell intoxicating liquors, and shall find that such transfer should be made, shall authorize such transfer, and enter its order accordingly, to be effective upon applicant executing and filing a bond for \$3,500, as before required, to the approval of the county auditor.

#### CHANGE OF CORPORATION AGENT.

**361m. Application to change corporation—Procedure.** Any hotel corporation holding a license, or its renewal, desiring to change its agent, or any subsequent one, to be named in place of its designated agent, shall give the required newspaper notice; may apply to the

Board, in writing, giving particulars of its license; and the Board finding such person to be fitted to sell intoxicating liquors, shall enter its order substituting the person designated as such agent.

#### DEATH OR INSANITY OF LICENSEE.

**361n. Death or insanity of licensee—Procedure.** In case of the death or insanity of the holder of any license, or of a renewal, the personal representative of such licensee, with the approval of the court, may file with the auditor, his written election to either continue or surrender the license, or renewal.

If he elects to continue the business, and being found by the Board to be fit person, upon filing a bond of \$3,500 to the approval of the county auditor, upon the same conditions as other applicants, he shall be permitted to continue such business for a term of six months, unless the license of the holder does not expire within the said time.

If found that such personal representative is not a fit person to personally conduct the business, he has the right to name a third person to conduct the business as his personal representative. Such third person is required to fill the legal requirements as to fitness, filing of like bond to the approval of the auditor as hereinbefore outlined, when he shall have the right to continue the business for six months, unless the license expires within the said time.

During such period of continuance, the personal representative may transfer the license the same as other transfers are made and sold.

The personal representative is amenable to all the prohibitions and provisions of the law as though he were an original holder.

At the close of such continuance, he may, as such personal representative, apply for a renewal of such license.

In case the personal representative elects to surrender such license, or its renewal, the Board shall order a refund of the license fee out of the county treasury for the proportionate part of the unexpired year.

**361o. Bankruptcy or receivership of licensee—Procedure.** Under the provisions of Act 1913, p. 627, Sec. 8328p, Burns R. S., when proceedings in bankruptcy, or receivership, are had for the property of the holder of a retail license, the receiver, or trustee, may within sixty days from the date of his appointment apply to the Board for the sale and transfer of such license, in all respects as the licensee might have done.

Such application shall be made and action taken by the Board as by the law provided. All the rights of the original licensee shall pass to the transferee.

Pending the application such licensee may continue his business, paying the net profits of the business to the receiver, being amenable to all laws and regulations respecting the sale of intoxicating liquors.

#### REMONSTRANCES.

**361p. Right of remonstrance on any and all applications—Duties of the Board.** In all the kinds of applications, viz.: for a new license; renewal of license; change of location of license; sale or transfer of



license; change of corporation agent, and for a wholesale or manufacturer's license, the act gives the right to any voter of the township in which the business is located, to file his remonstrance against the granting of any license, for the same reasons as are given in remonstrances filed against applicants for license.

Such remonstrance shall be heard and determined by the Board, and no action shall be taken toward such application and no license ordered until such remonstrance is heard and determined by such Board in favor of the application.

A remonstrance to be heard must be filed five days before the meeting of the Board at which such application is to be heard.

**Note:** In case of an application for a change of location, any voter of the township, town or city to which the location is sought, may remonstrate.

### REVOCATION AND SUSPENSION OF LICENSE.

**361q. A surety can be accepted only on one bond in force—Causes for suspension or revocation—Effect of.** The Board has power to revoke any license, if, after notice and a hearing, it finds that any of the following causes exist, viz.:

1st. If a licensee, a member of a copartnership, or the agent of a corporation, holding a license has, within a year, been convicted of a felony; has violated a law against lewdness; or is grossly immoral, or is unfit to conduct a saloon.

2d. If such licensee, member, or agent, has within the two years preceding, been adjudged guilty the third time of violating any act regulating the sale of intoxicating liquor.

3d. For any corporation continuing the sale of intoxicating liquor pending the refusal of the Board to substitute another agent, or pending appeal therefrom to the circuit or superior court, before the appointment of a suitable person or agent.

4th. The failure of licensee to pay his license fee to the proper incorporated town or city.

The act sets out a code for unfitness of a licensee on which the Board shall make a finding, viz.: having been found guilty of violation of any law regulating the sale of intoxicating liquors; permitting persons of lewd character to frequent his place of business; permitting obscene pictures, or pictures of nude females, to be exhibited, or other misconduct, and upon such finding, the Board shall suspend his license for a period not exceeding thirty days for the first offense, and for a second offense within two years not exceeding sixty days, and for the third offense within a period of two years the Board shall revoke the license.

If the Board, upon notice, finds that the licensee has knowingly permitted gambling in his place of business, or in premises under his control, no license shall thereafter be granted him.

The violation of any agreement in his application subjects the licensee to a suspension of his license for a determinate period, or to a revocation of the same. Any revocation prevents a license for two

years. No suspension or revocation shall obtain until the Board shall have given the licensee a hearing after ten days' notice of the grounds therefor and of the date for such hearing.

#### TERM OF LICENSE.

**361r. Duty of Board when appeal is taken—Term of license—Privilege of licensee to continue business during application for renewal.** Under the original act the term of the licensee was for one year, no more, no less, to be dated and begin on date the Board granted such license, or in case of an appeal, from the date of the judgment of the court. Under the amending act 1913, page 322, it is provided that the term shall be for one year, no more, no less, and the license shall date from the order of the Board granting the same, and in case of an appeal, it shall likewise date from the order of the Board, provided the application is for a new license. If the application is for a renewal, the renewal shall date from the day following the expiration of the original license or renewal.

Where an original license or its renewal is refused by the Board, and upon an appeal the court grants such license or renewal, it shall be dated as of the date of such court's finding.

In case of application for renewal the applicant may continue his business until the Board determines such application.

If the renewal is granted by the Board its date shall be the day following the date of expiration of the license or renewal so renewed.

**361s. Jurisdiction of circuit and superior courts as to revocation, renewals and transfers.** Any party to the record in any proceeding before the Board of Commissioners, had under any of the provisions of this act, feeling aggrieved by the decision of the Board therein, except as in this act otherwise expressly provided, may appeal from such decision of the Board to the circuit or superior court of the county, at any time within ten days thereafter, without notice, upon filing with the county auditor a written undertaking with sufficient sureties, to the approval of such auditor, for the payment of all costs that may be adjudged against such appellant upon such appeal: Provided, That no appeal taken from any order of the Board granting license, or any renewal thereof, or granting permission to transfer the same from one location to another, or from one person, firm or corporation to another, or substituting one person for another as the agent of a corporation holding such license, shall suspend the right of the holder of such license while such appeal is pending in the circuit or superior court, to sell intoxicating liquors thereunder, and under the order and judgment of said board so appealed from, as though such appeal had not been taken, and the holder of such license shall not be liable as seller without license for sales made during the pendency of such appeal, but shall be liable for the violation of any of the provisions of this act during such time, as though such seller had been regularly licensed.

All matters relative to revocation, renewal or transfer may be made in circuit or superior courts, which is given the jurisdiction, the same

as with Boards of County Commissioners and under the act, shall have prompt hearing.

Board of Commissioners vs. Scanlan, 178 Ind. 336;  
State vs. Board of Commissioners, 101 N. E. 813;  
Jay vs. O'Donnell, 178 Ind. 282;  
Cox vs. Tims, 105 N. E.

(Acts 1915, p. 20.)

**361t. Liquor license—Fees refunded.** In all cases where a license to sell intoxicating liquors as a beverage has been granted by any Board of County Commissioners or circuit or superior court to any person, firm or corporation, and such licensee, in good faith, relying on the validity thereof, took out such license, and paid the required fee therefor to any county, city or incorporated town, and thereafter the supreme court decided that, under such circumstances, such Board or court had no legal authority to grant such license or licenses, then, and in any such case, the Board of Commissioners of any such county, or the common council of any such city, or the board of trustees of any such incorporated towns, are hereby authorized to refund to such licensee the proportionate part of the license fee so paid to such county, city or incorporated town for the time such license had to run after such decision by the supreme court, such proportionate part of the license fee so refunded shall be paid out of the general funds of such city, county or incorporated town, as the case may be.

**Note:** This act does not provide for the return of license fee which has been paid to the township.

**361u. The "Moore" Remonstrance Amendment—Remonstrance—Forms.** If three days before any regular session of the Board of Commissioners of any county, a remonstrance in writing, signed by a majority of the legal voters of any township, or ward in any city situated in said county, shall be filed with the auditor of the county against the granting of a license to any applicant or against such granting to all applicants for the sale of spirituous, vinous, malt or other intoxicating liquors, under the law of the State of Indiana with the privilege of allowing the same to be drunk on the premises where sold within the limits of said township, or city ward, it shall be unlawful thereafter for such Board of Commissioners to grant license to any applicant therefor during a period of two years from the date of filing of such remonstrance against all applicants; if any such license should be granted by said Board during said period, the same shall be null and void, and the holder thereof shall be liable for any sales of liquors made by him the same as if such sales were made without license, and such violator of the law shall be subject to arrest and punishment as if no license had been issued. The number to constitute a majority of the voters herein referred to shall be determined by the greatest aggregate vote cast in said township or ward for candidates for any office at the last election preceding the filing of such remonstrance: Provided, however, That any remonstrance which is not directed personally against an individual, but which is directed against all appli-

cants, shall be separate and distinct, shall contain the name of no individual, but shall be directed to the Board of County Commissioners directly against the issuing of any such license to any person during the said two years: And provided further, That the following forms of remonstrance shall be sufficient under the foregoing provisions of this section, viz.:

(a) Form of remonstrance against a particular person:

State of Indiana, county of Kosciusko, ss.: To the honorable Board of Commissioners of said county:

We, the undersigned, legal voters in the township of Harrison (or third ward in the city of Warsaw) in said county and state, hereby respectfully represent that we are opposed to the granting of a license to John A. Brown, who has given notice of his intention to apply therefor, for the sale of intoxicating liquors in said township (or ward).

(b) Form of remonstrance against issuing any such license to any person:

State of Indiana, county of Grant, ss: To the honorable Board of Commissioners of said county:

We, the undersigned, legal voters in the township of Harrison (or third ward in the city of Marion), in the county and state aforesaid, do hereby respectfully represent that we are opposed to the traffic in intoxicating liquors and we hereby object to the granting of a license to any person for the sale of intoxicating liquors in said township (or ward).

#### JAIL—COUNTY.

(Acts 1 R. S. 1852, p. 345, Sec. 9811.)

**362. Law requiring establishment and keeping of.** There shall be established and kept in every county, by authority of the Board of Commissioners, and at the expense of the county, a prison for the safe-keeping of prisoners lawfully committed.

(Acts 1 R. S. 1852, p. 345, Sec. 9812.)

**363. Grand jury's inspection—Report to Board.** The grand jury at each term of the circuit court shall make personal inspection of the condition of the jail, as to the sufficiency of the same for safe-keeping of the prisoners, their convenient accommodation and health; to inquire into the manner it has been kept since the last term, and the court shall give this duty in special charge of the jury.

It shall be imperative upon the Board to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

(Acts 1858, S. p. 141, Sec. 9813.)

**364. Duty of Board when grand jury condemns condition.** Whenever any grand jury shall condemn any jail, as unsafe, or shall recommend that better provision shall be made for the prisoners as respects air, clothing or heating the same, the Board shall cause the same to be repaired, and in all cases, provide for sufficient ventilation and



bedding, and when no provision has been made for heating the jail the Board shall cause the same to be done.

(Acts 1909, p. 397, Sec. 9812a-d.)

**365. Jurisdiction, State Board of Charities.** By an act approved March 8, 1909, the Board of State Charities is given a general supervision of the county jails, and act through the circuit court. Section 4 of the act provides that it shall be the duty of the sheriff to report in writing quarterly to the Board of Commissioners the condition of the jail and of any needed improvements or repairs. The Board is required to visit the jail once in each three months.

(Acts 1 R. S. 1852, p. 345, Sec. 9816.)

**366. Board of prisoners, Board to allow for—When city liable for.** When a prisoner is committed for crime, or in any suit on behalf of the state, the Board shall allow the sheriff a reasonable charge for boarding such prisoner. (See Sec. 1022, costs 37, "Fees and Salaries," 1913.)

**Note:** The courts hold that cities are liable for the keeping, receiving and discharging of prisoners committed under the authority of the city for violation of its ordinances.

(Acts 1891, p. 114, Sec. 9825.)

**367. Law to erect (Indianapolis) jail.** Under an act approved March 5, 1891, it was made lawful for Board of counties having a population of 100,000 as per last U. S. census, to issue bonds to the amount of \$150,000, bearing 5 per cent. interest, for the purpose of raising funds to build a county jail, under specific conditions as to advertisement of, reception of bids, and sale of the bonds by the county treasurer.

(Section 9826.)

**368. Levy of tax.** The act further provides for a tax levy to be made by the Board at its next June session upon the taxable property of the county, to create a sinking fund for the payment of such bonds and interest; such tax levy is fixed at 5 cents on each \$100.

(Acts 1891, p. 114, Sec. 9827.)

**369. Limitation of Board.** The total expenditure for construction of and furnishing said jail and grading the grounds, shall not exceed the amount of proceeds of sale of such issue of bonds.

**Note:** At this date the act of 1891 obtains only to Marion County.

#### JUDGES CIRCUIT AND SUPERIOR COURTS, ADDITIONAL SALARY.

(Acts 1913, p. 61, Sec. 1652.)

**370. When and how may secure additional salaries in certain counties—Without council's appropriation.** By the provisions of an act approved February 24, 1913, the annual salary of judge of the circuit and superior courts was fixed at \$3,500, payable by the state; the act

further provided that in judicial districts, containing a city with a population of more than 30,000, or cities containing an aggregate of 60,000, as shown by last preceding U. S. census, upon petition signed by twenty or more resident freeholders of the county, representing such amount to be an adequate compensation for the services of such judge, and that the salary should be increased in a specified amount, limited to the specified amount, and not to exceed \$1,500 per annum, may be granted by the Board, after hearing evidence in open session, by entry of record. No appropriation by the council is required to authorize such allowance and payment.

(Acts 1893, p. 341, Sec. 1653.)

**371. When once fixed, can not be diminished.** Such addition to the salary of such judge as ordered by the Board, is payable out of the county treasury and payable quarterly; and such increase of salary, so fixed by the Board, shall not be diminished during the term of office of such judge; such allowance and the proceedings of the Board in relation thereto, if in compliance with the act, shall be final and conclusive.

(Acts 1899, p. 91, Sec. 1654.)

**372. When may secure additional salary.** In judicial circuits composed of three or more counties, whenever 200 or more resident freeholders, in any one of them, may file their petition to the Board, representing that the annual salary of the judge of such circuit is inadequate and should be increased in a specified amount, at either a special or regular meeting, the Board may consider such petition and hear evidence thereon, and may by entry of record make such increase sought, limited to \$500 per annum.

(Section 1655.)

**373. Additional salary payable quarterly.** Upon such allowance being made by the Board, such increase is made payable quarterly out of the treasury of the county.

## JUDGMENTS.

(Acts 1 R. S. 1852, p. 224, Sec. 6001.)

**374. County liable for—Lien on county property—Board's allowance—Duty of auditor.** When any judgment has been obtained against the Board in its corporate capacity, the public property of the county shall be liable therefor. The court, in rendering judgment, shall allow the Board a reasonable time, if it be necessary, to assess and collect a sufficient amount to pay and discharge the judgment in addition to the ordinary expenses of the county.

**Note:** This section must be read in connection with Sec. 5945 Burns R. S., Sec. 198, this book.

(Acts 1911, p. 414, Sec. 6004b.)

**375. Auditor's duty—Warrant.** By an amendment of March 4, 1911, it is provided that in the event of judgment against the county,

in a case in which the county was a party and was duly served with process for the payment of any claim against the county, and upon filing of certified copy of such judgment, decree or order with the auditor, and the allowance thereof by the Board, such auditor shall issue his warrant therefor.

Note: See Sec. 261, this book.

### JUSTICE OF THE PEACE.

(Acts 2 R. S. 1852, p. 13, Sec. 9448.)

**376. When shall hold inquest over dead body.** In the case of the inability or from absence from the county of the county coroner, any justice of the peace may hold an inquest over any dead body, if death occurred by violence or casualty.

(Acts 1875, p. 92, Sec. 9154.)

**377. Board shall fill vacancy.** Whenever a vacancy occurs in the office of justice of the peace, the Board shall fill the same by appointment. The auditor shall certify such appointment to the governor who shall commission such justice to serve until his successor is elected and qualified.

(Acts 1891, p. 33, Sec. 1704.)

**378. When Board shall appoint in an incorporated town.** Upon the petition of the majority of the Board of Trustees of an incorporated town which has not a resident justice, the Board shall appoint a justice of the peace, who shall reside, and hold his office, in such incorporated town. The Board shall certify such appointment to the governor, who shall commission such justice until his successor is elected and qualified.

(Acts 1905, p. 584, Sec. 1935.)

**379. Boards cannot make allowance to attorneys appointed by J. P.**

Note: The courts have decided that attorneys appointed by justices to defend persons charged with crimes can not recover compensation from the county.

(Acts 1913, p. 834, Sec. 1700.)

**380. 1913 law relative to J. P.—Number of—Cities 45,000 to 100,000—Five in township over 100,000.** The number of justices of the peace in each township shall be regulated by the Board, by a proper order of record.

The act of March 15, 1913, limits the number to two for each township and one in addition for each incorporated town therein, and one in addition for each incorporated city therein, the auditor being required to certify such order to the clerk of the circuit court.

In no case shall the number exceed five justices in a township containing a city of 100,000 or more by the last U. S. census (Indianapolis). In townships containing such city the Board shall designate where such justices shall hold their offices, with rules for keeping open such offices.

This act also gives the Board power to designate where justices

shall hold their offices in townships containing a city of 45,000 to 100,000, according to the last census, and to require such justices to keep their offices open every day, during business hours, Sundays and legal holidays excepted.

**Note:** The last provision above now applies to the townships in which Evansville, Ft. Wayne, Terre Haute and South Bend are situated.

### LABORERS.

(Acts 1889, p. 143, Sec. 7977.)

**381. Eight hours work a day's work—Exceptions.** By an act, approved March 6, 1889, eight hours shall constitute a legal day's work for all classes of mechanics, workingmen and laborers, excepting those engaged in agricultural or domestic labor, but overwork by agreement is permitted.

### LAKES (FRESH WATER).

(Acts 1905, p. 447, Sec. 6162.)

**382. How to determine high-water mark, when lost.** Boards are prohibited from ordering or recommending the location of a ditch or drain cutting into or through or upon the line of any fresh water lake, or from, in any way, constructing a ditch within forty rods of any lake with a grade lower than the present known water line of the lake.

The highest mark of water in such lake, for the ten years last past, to be taken, in the event the line is lost.

### LEASING COURT HOUSE.

(Acts 1909, p. 260, Sec. 5989a.)

**383. When Board may lease portion of court house.** The Board, in the case that there is a portion of the court house not needed for county purposes, has authority to lease such portion to the city or town, where court house is located, for a period not to exceed ten years.

The lease may include light, heat, water and janitor service and the rate charged shall be fair and reasonable, and the rents payable semi-annually, on June 1st and December 1st of each year.

### LEVEES.

(Acts 1907, p. 404, Sec. 8192.)

**384. Preliminary proceedings before circuit court.** Under the provisions of an act, approved March 9, 1907, when five or more persons shall be benefited and protected from overflow by the construction of a levee, the preliminary proceedings in such construction are conducted under the jurisdiction of the circuit court, which preliminaries are set out and found in Acts of 1911, at page 668; Acts 1907, at page 404; Acts 1911 at page 172, and Acts 1909, at page 390.

Where the contract price of the construction of such levee is over \$5,000, the act provides for the issuance of 10-year bonds for its pay-



ment, and the proceeding then comes within the jurisdiction of the Board.

(Section 8192.)

**385. Board's jurisdiction obtains in issuance of bonds in payment—Procedure.** The bonds, which cover the amount of the total contracts and incidental expenses, shall be issued in denominations of not less than \$100, except the last bond. Such bonds shall bear six per cent. interest, payable semi-annually on the first days of June and December. All bonds shall bear interest from the day of letting the contract, and shall sell at not less than par value. The bonds must show on their face for what purpose they were issued and shall be payable out of collections made on the assessments and not otherwise.

To provide for the payment of such bonds and interest the Board shall order the auditor to prepare a "levee duplicate" to cover such collections to be made by the treasurer.

**Note:** For full information, reference should be had to the act itself.

### LEVEES, DIKES, ETC.

(Acts 1913, p. 433, Sec. 8233b to 8233e-1.)

**386a. 1913 law—How association may be incorporated.** Under an act, approved March 10, 1913, it is specially provided that nothing therein shall be construed to repeal, or affect in any way, any of the provisions of the act approved March 9, 1907.

The first twelve sections of the act cover the incorporation of an association for construction, extension, changing, improvement, maintenance or repair of any levee, dike, breakwater, dam, sewer, ditch, drain, diversion channel, creek, water course, pumping station, syphon, flood gate, waste gate, or in a combination of more than one of these objects, or in any work deemed by them to be necessary for, or to be in aid to, the protection, reclamation or improvement of any wet or overflowed land, or lands subject to overflow, or to change, improve or repair same; the election of officers; survey and specifications and certain restrictions, before any work can be commenced by the board of directors.

**386b. Petition to Board for appraisers.** The directors, after the foregoing preliminaries, may then apply to the Board of that county in which it is believed the largest amount of the specified proposed work, in value, is located, for appraisers to assess benefits and damages.

Such application should contain:

1st. The location and general description of the work proposed to be done or maintained;

2d. The estimate of its entire cost, distributed in the several counties;

3d. The names, as petitioners, of either a majority of owners of lands, or of the owners of two-thirds of the lands in acres to be benefited by such proposed work.

**386c. Intervening petition—Action of Board.** An intervening petition may be filed, setting up the facts, by a non-petitioner, who will be

affected by the proposed work that the third specification above does not state facts; the original petitioners may file an answer in general denial.

The issue thus formed shall be set for hearing and determination by the Board within ten days from the filing of the answer.

Any party aggrieved by the action of the Board may appeal to the circuit court, within five days, the auditor being required to make and file, with the clerk thereof, a complete transcript, together with the intervening petition. The appellant is required to give bond to the approval of such auditor, for all adjudged costs.

Upon sufficient proof that the statements in the third specification of the petition are true, together with the other facts set out in the petition, the Board shall appoint three disinterested, resident freeholders as appraisers, no two to be of the same county, unless there are only one or two counties involved. When two counties are involved, then two appraisers from the county where the petition is filed by the Board shall be appointed.

The remaining portion of the section outlines the duties of the appraisers relative to assessment of benefits and damages, and the next section of the act provides that all interested owners of lands shall be served with notice of time and place, when and where the appraisers will begin their examination, such time and place to be named by the directors.

**386d. Concerning report of appraisers.** The appraisers must make an examination of all the lands and roads which, in their judgment will be affected, and if they find the proposed work will be of public convenience or welfare, or will benefit the public health, or any public road or roads, they shall find that the proposed work will be of public utility, and the Boards and courts shall so find upon such facts when construing this act.

**386e. When report is against public utility.** If the appraisers find that the proposed work is not of public utility they shall so report and file report with the auditor, who shall fix a date within thirty days thereafter for the Board to hear and determine the question of public utility. Such hearing shall be advertised by the auditor by one publication in some county newspaper at least ten days before the fixed time of the meeting of the Board.

The Board shall then hear the evidence offered and shall determine whether or not said proposed work is of public utility. If found unfavorably, the Board shall dismiss the proceedings at the cost of the petitioners.

**386f. When report is in favor of public utility.** If the Board determines, or if the appraisers find, that the proposed work is of public utility, such appraisers shall follow up their duties by examination of the lands affected, or appropriated and their value; material required as set out in the specifications; the public roads and other contingencies mentioned in the act, and they shall determine and fix amount of assessed benefits and damages on lands to be described, with the owners of same, and return the appraisalment to the clerk of the association,

in whose hands it remains open for inspection until the meeting of the appraisers to equalize the assessments, as in the act provided.

**386g. Requirements to be covered in the report.** The act mentions the requirements as to sufficiency of descriptions of lands; notice to non-residents; right of appeal; the cases where benefits assessed are greater than the damages, and where damages exceed the benefits; and provides that the directors may apply to the Board, where such work has been in part or wholly completed, for permission to come under the operation of the rules governing, under Sec. 13 of the act.

**386h. Board's action as to issuance of bonds—**When in more than one county. After the intermediate duties of the appraisers covering the equalization of assessments, the hearing of complaints by them have been performed and they have completed and perfected their schedule of assessments, and have made the required affidavits, they shall deliver same, together with a copy of the order of the Board of their appointment, to the clerk of the association, likewise a copy for filing with the recorder, which when recorded makes a lien on the respective lands therein assessed.

**386i. Action of Boards subject to appeal to circuit court.** The act provides for an appeal to the circuit court by any one interested within ten days from filing the schedule of assessment in the recorder's office by filing an appeal bond and for letting the work by contract.

After all the foregoing preliminary matters are accomplished, the directors may apply to the Board of Commissioners to issue county bonds to raise money to construct the work. The Board, being satisfied that all the necessary proceedings have been complied with, shall cause such bonds to be issued for the amount required to complete the work in such county, the bonds to run not to exceed fifteen years, and to draw interest not to exceed 6 per cent., payable semi-annually.

When the work is in more than one county, the Boards of such counties shall meet in joint session, at the principal office of the association, and then and there determine the whole amount of bonds to be issued to complete the proposed work, which amount shall be divided and apportioned to each county according to the amount to be paid on account of said work for the lands and roads in each county.

**386j. How county is remunerated for advances.** To reimburse the county for the money so advanced to construct such work the county auditor shall place on the tax duplicate each year thereafter the annual amount due from each tract of land assessed as benefited, less whatever may have been assessed as damages to such tract on account of such work till such damages are paid, and the same shall be a lien on such land, and shall be collected as other state, county or township taxes are collected: Provided, That enough additional shall be levied to cover the annual interest each year: and Provided, further, That no person assessed shall raise any question as to the validity of the tax so levied after it shall have been placed on the tax duplicate, which he might have raised under section twenty-one (21) of this act, but any person so assessed may show error of description of land, or amount demanded, if such error exist.

**LIBRARIES—COUNTY.**

(Acts 1 R. S. 1852, p. 353, Sec. 4857.)

**387. Ten per cent. net proceeds county seat donation.** To establish and maintain a public library in the county, for the use of its inhabitants, there shall be reserved of the net proceeds of the sales of all lots within the county-seat town sold as the property of such county, and ten per cent. of all donations made to procure the location of such county seat, and the Board shall make the necessary order for the collection and payment of the same.

(Acts 1 R. S. 1852, p. 353, Sec. 4858.)

**388. Annual allowance by County Board.** At the June session each year the Board is authorized to appropriate a sum of from \$20 to \$75, payable to the treasurer of the county library for the purpose of purchasing books, maps and charts for such library.

**389. Librarian's annual report to Board.** At the same session the librarian shall report to the Board the condition, books added or lost, within the preceding year, and their value.

(Acts R. S. 1852, Sec. 4859.)

**390. County Library—Trustees.** The clerk, auditor and recorder shall have charge of the library and are constituted trustees, each being liable on his official bond for the performance of duties required of him.

The trustees shall cause the expenditure of all moneys received toward the purchase of books, charts and maps, and make annual report to the Board at its June session.

(Acts 1899, p. 67, Sec. 4867.)

**391a. Duties of library trustees (county of 19,700 to 20,000).** Where there is established a public library for use, on equal terms to all inhabitants in the county, in a county seat containing a population of 19,700 to 20,000, by the census of 1890, the trustee of the county library shall deposit with such public library, all of the books, furniture and property of every kind, and consolidated with same, for the use of all inhabitants.

**391b. Annual appropriation by Board.** The Board shall annually appropriate and pay to the trustees of such public library the sum of \$100.

**LIBRARIES—TOWNSHIP.**

(Acts 1879, S. p. 171, Sec. 4905.)

**392. Board's consent to trustee for tax levy.** With the consent of the Board, the township trustee shall make an annual levy of not more than one cent on each \$100, taxable property, for library purposes.

Such tax may be levied in such townships only where there is a public library for the use of the inhabitants thereof, established by private donations, and is worth \$1,000 or more; and when it becomes necessary to enlarge such library building, a levy, for three suc-



cessive years, may, with the consent of the Board, be made of five cents on \$100 of taxable property, for such enlargement, to be expended by the trustees of such library.

(Acts 1895, p. 240, Sec. 4906.)

**393. When donations value of \$25,000—Tax levy.** With the consent of the Board, the township trustee shall annually make a levy of six cents on each \$100 taxable property in a township, where there is an established library by private donations of the value of \$25,000, to be applied to the purchase of books and the maintenance of such library.

When it becomes necessary to purchase additional ground for the extension or protection of library buildings already established by such private donations, the trustee may, with the consent of the Board, for not more than three successive years, make a five cent levy on each \$100 taxables, for such purpose, to be expended by the trustee of such library.

(Acts 1899, p. 228, Sec. 4913.)

**394. When township library may be abolished.** In any township having a library established by private donations, to the value of \$1,000 or more, the Board may, upon due proof thereof, by entry upon its records, abolish the township library, and order the transfer of all books, papers, records, furniture and paraphernalia to the trustees and management of such library.

#### LIBRARY—COUNTY FUND.

(Acts 1901, p. 130, Sec. 4941a.)

**395. Duty of Board (county 25,720 to 25,999).** Where there is established in a county-seat containing a population of 25,720 to 25,999 by the last preceding United States census, a public library containing 3,000 volumes, or more, it shall be the duty of the trustees of the county library to turn over to the directors of such public library the county library fund in their hands, either in cash, notes or other securities or property real and personal, acquired by reason of loans of such fund, and title thereto to be vested in them, with full powers to collect the same by suit or otherwise; to loan the same, and care for the safety thereof. Authority is given the board of directors to purchase real estate for use of said library, and to loan any unused portion of the funds as school funds are loaned by the auditor.

#### LICENSES.

(Acts 1 R. S. 1852, p. 356, Sec. 8257.)

**396. When Board may fix amount of fee.** The Board may at any term fix the amount to be charged for licenses, except where such amount is specially fixed by statute.

(Acts 1857, p. 89, Sec. 8234.)

**397. Certain fees fixed by statute.** The act approved March 7, 1857, fixes license fees as follows:

Ferries \$3 to \$50; traveling merchants and peddlers, non-resident of the State, graded on business done, from \$1,000 to \$5,000, \$5 to \$20, excepting tea and coffee. For pay exhibitions, any caravan, circus, rope or wire dancing, legerdemain, ventriloquism, puppet-show, concert, theatrical performance or any other exhibition of whatever name, traveling or stationary, \$5 to \$25 for each separate performance. Business of stock and exchange broker, individual or corporations, \$100 per year.

#### MANDATE.

(Acts 1911, p. 541, Sec. 1225.)

**398. How prosecuted against the Board.** The action of mandate may be prosecuted against the Board to compel the performance of any act which the law specifically enjoins.

**Note:** The courts have decided that the mandate obtains in matters of repair or rebuilding of bridges; allowance of certain claims against county; compelling payment for constructing gravel roads; the approval of official bonds; the repair of gravel roads and other collateral matters.

Further, that service on the president of the Board is a sufficient service on the Board.

#### MEMORIAL HALL.

(Acts 1891, p. 369, Sec. 6044.)

**\*399a. Boards to procure subscription books for.** Boards are authorized to procure a proper book for the purpose of receiving subscriptions and donations from any person who may desire to contribute toward the erection of a monument or memorial hall to those, from their own county, who have or may lose their lives in or from service in the civil war, known as the war of the rebellion.

The book shall be preserved and free to the inspection of any one who has lost friends or relatives in such war.

**399b. Board may make allowances.** Boards are authorized to make such allowances or appropriations out of the county treasury as thought proper for the purpose of erecting such soldiers' monument or memorial hall.

**Note:** It is evident that the county council and not the Board must make the appropriation. Sec. 180, this book.

**399c. Duty of Board when has sufficient funds.** When sufficient funds have been raised for the purpose named in the act, it becomes the duty of the Board, unless a donation therefor has been made, to proceed to select and purchase a suitable spot of ground, at or near the county seat, on which the soldiers' monument or memorial hall shall be erected.

Such grounds and memorial shall be under the care and control of the Board, whose duty is to see to its proper preservation.

**399d. When may appropriate not over \$50,000.** Under an amended act of 1907, at page 103, provision is made that Boards are, upon the petition of a majority of the voters of the county, authorized to appropriate out of the county funds, not otherwise appropriated, a sum not

exceeding \$50,000 for the purpose of building a suitable monument or memorial hall, in commemoration of the services and patriotism of the soldiers who fought and died in defense of their country during the late rebellion, and in defense of the states and the rights of man.

**Note:** County council should make the appropriation. Sec. 180, this book.

(Section 5917b-o.)

**399e. Act 1913—Requirements.** In the additional act of 1913 at page 951, provisions are likewise made for Boards of counties containing a second class city to erect and maintain a memorial building, auditorium or coliseum.

The act covers all requirements and duties of the Board at full length, and should have reference.

### MERIDIAN LINES.

(Acts 1895, p. 24, Sec. 8428.)

**400. How may be established.** For the purpose of establishing a permanent meridian line, one which is true north and south, the county surveyor under an act approved, March 11, 1895, may petition the Board setting forth the reasons and necessity therefor, when the Board shall enter its order for the establishment of such line at or near the county seat, which is to be made permanent, of not less than 100, nor more than 1,000 feet in length.

When so established and recorded in the recorder's office, the Board shall pay the recorder's fee, and also allow the county surveyor a reasonable amount for fees and expenses.

### MUNICIPAL ASSESSMENTS.

(Acts 1907, p. 167, Sec. 8712.)

**401. County property subject to liens.** All real estate of the county situated within the corporate limits of a city is subject to the same duty and liability in respect to municipal improvements, and subject to liens for assessments, as that of private owners. However, no attorney fee or penalty shall be collectible from the county.

### MUTILATED RECORDS.

(Acts 1877, p. 120, Sec. 6084.)

**402. Duties of the Board—Preservation of public records.** When by reason of mutilation, decay or of partial destruction of the records in the office of the clerk, auditor, treasurer, recorder or sheriff or of courts of record, it shall be necessary to have such records preserved, it shall be the duty of the Board to enter an order of record directing the officer in custody, and the clerk of such court, to copy and transcribe such records in proper books, specifying in such order the records or parts of records which are to be copied and transcribed. The Board shall make such reasonable allowance for such work as shall seem just and proper.

### NEWSPAPER SUBSCRIPTIONS.

(Acts 1 R. S. 1852, p. 376, Sec. 6029-6031.)

**403. Boards may subscribe for—Bound for preservation—County recorder.** Boards, at their option, may authorize and direct the subscription to and preservation of the public newspapers published in their county.

Upon certified order, the recorder may make such subscription for each of such papers published in the county, of a political or miscellaneous character, file the same, and from time to time cause the same to be substantially bound, and kept in his office for the use of the inhabitants of the state, free of charge and expense.

Such subscription price and expense of binding shall be paid out of the county treasury, as other accounts are paid.

### NUISANCE.

(Acts 1881 S. p. 240, Sec. 291.)

**404. When Board may be held liable for.** Whatever is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action.

The courts have held that a Board may be liable for nuisance by keeping and maintaining a pest house in such manner and so near a house as to be offensive.

### OFFICES AT COURT HOUSE.

(Acts 1905, p. 584, Sec. 2420.)

**405. Penalty for failure of officer to hold office at court house.** Any auditor, treasurer, clerk of the circuit court or recorder of a county, who shall, without the consent of the Board, keep his office, and the books and papers belonging thereto, in any building other than that provided by such Board for that purpose, shall on conviction, be fined not to exceed \$1,000.

### ILLEGAL FEES.

(Acts 1907, p. 659, Sec. 2389.)

**406. Penalty—Failure to perform official duty—Illegal fee—Second conviction.** Any officer under the constitution or laws of the state, who, under color of his office, demands or receives any fee or reward, other than allowed by law, to execute or do his official duty; or fails to perform any duty in the manner and within the time prescribed by law, shall on conviction be fined \$10 to \$500 and imprisoned in the county jail not exceeding six months.

A second conviction brings imprisonment from one to three years in the state prison, disfranchisement and incapacity to hold office for any determinate period.



**OFFICIAL SEAL.**

(Acts 1 R. S. 1852, p. 224, Sec. 5983.)

**407. Sufficiency as evidence, when sealed.** The Board of each county shall use a common seal; and copies of their proceedings, when signed and sealed by its auditor, shall be sufficient evidence thereof, on the trial of any cause in any of the courts of this state.

**PROCEEDINGS PUBLIC.**

(Acts 1 R. S. 1852, p. 224, Sec. 5988.)

**408. Where may be held.** The Board shall sit with open doors.

Where there shall be no court house, or on account of its unfitness, the Board may hold its meetings in the office of the auditor, or in such other building as thought proper.

**PILOTS—OHIO FALLS.**

(Acts 1 R. S. 1852, p. 393, Sec. 9739.)

**409. Licensed by governor—Board of Clark County fixes fees—Revocation of license.** Pilots licensed by the governor to pilot boats over the Falls of the Ohio shall receive, for such services, fees to be fixed by the Board of the county of Clark. Such fees shall be published in that county and posted up in three public places in the town of Jeffersonville.

The Board of Clark County may revoke such license for cause, with right of appeal to the clerk of the circuit court.

**POWERS AND DUTIES OF COUNTY COMMISSIONERS.**

(1 R. S. 1852, p. 224, Sec. 5985.)

**410. General statute mentioning.** Such commissioners, in their respective counties, shall have power at their meetings:

First. To make orders respecting the property of the county, in conforming to law; to sell the public grounds of the county upon which the public buildings are situate, and to purchase in lieu thereof, in the name of the county, other grounds in the county seat, on which such buildings shall be erected; to purchase other lands for the enlargement of the public square; and to take care of and preserve such property.

Second. To allow all accounts chargeable against such county, not otherwise provided for; and to direct the raising of such sums as may be necessary to defray all county expenses.

Third. To audit the accounts of all officers having the care, management, collection or disbursement of any moneys belonging to the county or appropriated for its benefit.

Fourth. To perform all other duties that may be enjoined on them by any law of this state.

**Note:** This section should be read in connection with the county council law.

**PUBLIC BUILDINGS AND STRUCTURES.**

(Acts 1907, p. 580, Sec. 5893.)

**411a. Construction of public buildings—Plans and specifications—Public inspection.** It shall not be lawful for the Board to make any contract for the construction of a court house, jail or other county or township building or monument until plans and specifications have been deposited in the auditor's office open to public inspection for thirty days.

Likewise, it is unlawful to contract for the construction of any bridge until a survey, profile and general plan have been filed with the auditor and open to public inspection from the date of the first advertising of such contract. All contracts attempted to be otherwise made, are null and void.

(Acts 1907, p. 580, Sec. 5894.)

**411b. Bridges—Survey, profile, general plan—Public inspection—Publication.** When the entire cost for the repairs or the building of any bridge exceeds \$100, and the Board has adopted the survey, profile and general plans which have been deposited in the office of the auditor for open inspection for thirty days, the Board is prohibited from letting such contract until it has advertised such and requested bids for the same for two weeks in a newspaper of general circulation within the county, ten days intervening after the last publication. Such advertisement shall refer to such survey, profile and general plan.

Posting of notices at the court house is likewise required, and bids may be retained by bidder until the advertised open meeting.

**Note:** See Sec. 430a, this book.

(Section 5894.)

**411c. Opening of bids for public buildings and bridges.** When the cost of a proposed public building exceeds \$300, and the Board has adopted plans and specifications which have been deposited in the auditor's office as required by law, such Board shall not let the contract for the building until such letting has been advertised for at least six weeks in at least one newspaper of general circulation, in the county, and by posting notices of such letting at the court house, and at five or more other public places, giving the time, place and terms of same with reference to such plans and specifications.

**Note:** The Board has no authority to require any bidder to submit his bid at any time earlier than the open meeting when it is to be received. (Burns R. S. Sec. 5896a, Sec. 430a, this book.

(Acts 1907, p. 580, Sec. 5894.)

**411d. Requirement when patented device or monopoly is used.** When any plans or specifications include the use of any patented device or any article controlled by a monopoly, the specifications shall be accompanied by a statement of the terms upon which such device or article may be used or obtained.

(Acts 1907, p. 580, Sec. 5895.)

**411e. Required duplicate plans and specifications—Sealing of same and preservation.** The law requires that all plans and specifications shall be prepared in duplicate and be certified as identical.

One set of plans shall be used for all public purposes, the letting of the contract and as working plans; the other set, at time of deposit, shall be sealed and carefully labeled, and shall remain sealed and not opened until it shall be necessary to pass on the acceptance of the work for which they were prepared.

Such work shall be carefully inspected with reference to the sealed plans and specifications and any deviation from the requirements shall be a valid cause for refusal of such work until it is completed in full compliance with the contract.

(Acts 1907, p. 580, Sec. 5896.)

**411f. How and when contract let.** The law provides that after the depositing of plans and specifications, the required newspaper advertisement and proper posting of notices of the letting of a contract for a court house, jail or other county or township building, bridge or monument, according to such plans and specifications, the Board shall upon the day fixed, let the same to the lowest responsible bidder upon the terms of the notice mentioned.

The Board, under the act, has the right to reject any and all bids, and may again advertise for bids. The courts have handed down many decisions defining its discretionary power in determining "the lowest responsible bidder."

**411g. Non-collusion affidavit an absolute requirement—Bond required.** The law specifically enjoins that an affidavit of non-collusion shall accompany every bid for the letting of any county building or for work or supplies, together with a bond payable to the State of Indiana in the sum of the amount of such bid, signed by at least two freehold residents of the county, as sureties, or by a properly authorized and qualified bonding company, guaranteeing the faithful performance and execution of the work so bid for, in case of such award, and guaranteeing the payment of all incurred debts for labor, materials furnished and the Board of such laborers. Investigation as to financial responsibility shall be made by the auditor and the clerk of the circuit court as to such freeholders and certified to the Board.

(Acts 1907, p. 580, Sec. 5898.)

**411h. When Board may appoint inspector.** The Board, in its discretion, may appoint a qualified inspector of any work of construction and repair and of the supply of material therefor.

The inspector shall follow up the progress of such work, and see that all requirements are faithfully complied with, and report any and all deviations from such requirements to the Board. Before any final payment or settlement is made, such inspector shall file with the Board an affidavit that all requirements of the contract have been complied with fully and faithfully.

**OFFICERS INTERESTED IN PUBLIC CONTRACTS.**

(Acts 1905, p. 584, Sec. 2423.)

**412. Penalty, fine and imprisonment for officer interested in public contracts.** Any state officer, county commissioner, township or town trustee, mayor or common councilman of any city, school trustee of any town or city, or their appointees or agents, or any person holding any appointive power, or any person holding a lucrative office under the constitution or laws of this state, who shall, during the time he may occupy such office or hold such appointing power and discharge the duties thereof, be interested, directly or indirectly, in any contract for the construction of any state house, court house, schoolhouse, bridge, public building or work of any kind, erected or built for the use of the state, or any county, township, town or city in the state, in which he exercises any official jurisdiction or who shall bargain for or receive any percentage, drawback, premium or profits or money whatever, on any contract, or for the letting of any contract, or making any appointment wherein the state, or any county, township, town or city is concerned, on conviction, shall be fined not less than three hundred dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than two years nor more than fourteen years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

(Acts 1907, p. 580, Sec. 5899.)

**413. Rights of laborer and sub-contractor against contractor.** The act approved March 12, 1907, provides that any laborer or materialman, or person furnishing board to such contractor, on public contract, under the act, and having a claim against such contractor therefor, shall have a right against such contractor and his bondsmen, provided such person shall have first demanded payment from such contractor.

(Acts 1911, p. 437, Sec. 5901a.)

**414. Full settlement withheld by Board—Laborers—Material.** The act approved March 4, 1911, requires Boards to withhold full payment to contractors until they have paid to any sub-contractor, or laborer employed in such construction, all bills due and owing them.

Provided, there is a sufficient sum due the contractor on such contract to pay the same in full, else then the sum to be prorated in payment of all of such bills. Such sub-contractors and laborers shall file with the Board their claim within thirty days from the completion of the work, and when there is no dispute about the bills, the Board shall pay such claims out of the funds due such contractor, and take receipt therefor from such claimants and deduct the amount so paid from contract price. In case of a dispute the Board shall retain such balance until the correct amount is determined, and then shall pay as above mentioned.

(Acts 1907, p. 580, Sec. 5900.)

**415. Sale of county property, only at public auction—Advertisement.** Boards shall not sell any county property, either real or per-



sonal, except at public auction, and then only after advertising such property for sale sixty days in at least one newspaper of general circulation in the county and posting up notice at the court house, giving the terms, time and place of sale and a description of the property to be sold.

(Section 5901.)

**416. Penalty for making contract contrary to law of 1907.** Any county commissioner, or Board, entering into a contract for the construction of any county public building, without first complying with the foregoing requirements, shall be guilty of a misdemeanor and upon conviction thereof be fined \$500 to \$1,000, to which may be added imprisonment in the county jail for any term not exceeding six months.

(Acts 1897, p. 14, Sec. 5902.)

**417. Contract for court house—Let as whole or the several parts.** In the letting of contracts for a court house, the Board is privileged to, either, let the entire contract and everything connected therewith, according to the plans and specifications, in one contract, or to let the same in several contracts for the separate parts of the work, if, in the opinion of the Board, it is to the interest of the county to so let the contracts, and bids may be required and received accordingly.

(Acts 1899, p. 73, Sec. 5903.)

**418. When unlawful to order construction of court house—Counties more than 25,000—Relocation—When contract is null and void.**

**Note:** The Supreme Court, in *Kraus v. Lehman*, 170 Ind. 408, held that the act of 1899, making unlawful contracts for the construction of court houses in counties of more than 25,000 population, unless upon petition of 500 freeholders of the county, is unconstitutional. This act is Sec. 5903 Burns' R. S. 1908.

The act of 1901, being Secs. 5904, 5905 and 5906 of Burns' R. S. 1914, and the act of 1913, being Secs. 5906a, 5906b, 5906c and 5906d Burns' R. S. 1914, providing that upon the petition of 500 or more freeholders in certain counties, the Board shall order an election upon the question of whether a court house shall be erected, and if the proposition carries, the Board shall construct the court house, are, in the opinion of the editor, unconstitutional under the ruling in *Kraus v. Lehman*, supra, in that each act attempts to regulate county business and is a local law.

For that reason the sections named are not set out herein.

(Acts 1 R. S. 1852, p. 224, Sec. 5989.)

**419. Additional law relative to furnishing public offices.** The Board shall cause a court house, jail and public offices for the clerk, recorder, treasurer and auditor to be erected and furnished, where the same has not been done, and keep them in repair, and shall make them fire-proof if practicable.

(Acts 1899, p. 467, Sec. 5990.)

**420. Furnishing public offices for sheriff and county superintendent.** Provisions shall also be made by the Board for offices in the court

house, or at the county seat, for the sheriff, county superintendent of schools and surveyor of the county, respectively, and all records and papers of such offices shall be kept and preserved and turned over to their successors in office.

(Acts 1913, p. 468, Sec. 5906a.)

**421. 1913 law—Erection of court house—Counties less than 25,000—Publication—Election expenses.** Upon the filing of a petition with the Board of any county having a population less than 25,000, as shown by the last preceding U. S. census, signed by 500 or more resident freeholders and taxpayers to build, construct and erect a court house therein, such Board shall submit to the voters at a special election to be called within three months from its filing, by advertising the same for three consecutive weeks in two newspapers in such county, of opposite politics, and by posting up written or printed notices of such election twenty-one days prior to such election, such notices to be signed by the members of the Board, attested by the auditor, which shall be posted by the sheriff, proof being made and filed by him, and upon the giving of such notice, the polls shall be opened upon the day specified in the order of the Board, for the purpose of voting on the question whether or not a court house shall be erected as petitioned for. The expenses of such election and its officers shall be paid by the Board out of the general fund.

(Acts 1913, p. 468, Sec. 5906b.)

**422. Election commissioners—Their duties—Limitation of cost of court house, \$250,000.** The vote for building of court house shall be taken by printed ballots of "yes" or "no." The Board shall appoint one known to be in favor of, and one known to oppose the construction of such proposed court house, and these, together with the county auditor, shall be election commissioners, and shall prepare and distribute the ballots. The vote on said question shall be certified by the inspectors to the Board on the first Thursday following the day of election, and if a majority of votes is in favor of building such court house, the Board shall at once proceed to the building, construction and erection of the same as in the act provided.

The limit of expenditure for such court house with its equipment and furnishing is fixed at \$250,000.

(Acts 1913, p. 468, Sec. 5906c.)

**423. Fiscal matters relative to erection—Sale of bonds.** The Board, when such election should carry, shall construct such court house as provided by law and shall have power to issue bonds for such purpose. The bonds shall be in denominations of \$500, each; running for a period of ten years, not to exceed twenty years, with the privilege of payment of any or all after ten years; shall bear 4 per cent. interest per annum, and shall be sold by the treasurer of the county, such bonds to be nontaxable.

The sale shall be made by sealed bids, and the bids shall be sepa-

rate as to each bond, or the multiple of the same not to exceed twenty bonds.

The Board of any county having a surplus in the general fund shall have power to expend such surplus, or any part thereof for such construction, and further to employ an architect and superintendent to prepare plans and specifications to be paid out of the general fund, limited to 3 per cent. for plans and specifications and 2 per cent. of cost for superintending.

(Acts 1901, p. 48, Sec. 5904.)

**424. "The Court House Construction Board"—How appointed—Their powers and compensation.**

**Note:** The act of 1901, p. 48, Secs. 5904-6, clearly applies to but one county and for that reason is not set out herein. Is the act constitutional? See *Kraus v. Lehman*, 170 Ind. 408.

**REAL ESTATE—BUILDING SITES.**

(Acts 1899, p. 74, Sec. 5907.)

**425. Proceedings to condemn real estate for public buildings.** When at a regular meeting of the Board by a resolution, it shall be adjudged necessary to acquire certain described real estate conveniently located on which to erect a court house or other public building or for the purpose of constructing a necessary addition to any county building, such Board may cause to be filed, in the corporate name of the county in the circuit court of said county, a petition praying that appraisers be appointed to appraise the value of the real estate deemed necessary for public uses.

(Acts 1899, p. 74, Sec. 5911.)

**426. Deposit with clerk of circuit court—May make payment condemned real estate.** When the value of such appropriated real estate has been finally determined, the Board may provide for the payment of the amount by a warrant on the county fund, in favor of the clerk of the circuit court, in trust, for such owners or other persons adjudged to be entitled thereto.

(Section 5912.)

**427. Duty of the court to execute deed to the county.** Upon the payment to the clerk, and his filing the receipt in open court as a part of the proceedings, the court shall direct the clerk of the circuit court to execute a deed conveying the title to such county and to deliver the same to the Board.

(Acts 1903, p. 231, Secs. 5913-5915.)

**428. When Board empowered to construct and maintain public hall—Levy of tax—Rent of hall—Custodian.** Boards shall have power to construct and thereafter maintain a public hall, or halls, at convenient places for public meetings. Such hall to be used by societies, organizations, associations, political parties or assemblages of people for the purpose of holding lawful meetings in which the public is interested, and to which the public is invited without admission fee.

The Board has power to purchase real estate for such purpose and levy a tax on the property in the county subject to taxation.

The hall may be rented at rates fixed by the Board for other than public meetings. The Board may furnish a janitor, light and heat for such hall and shall appoint a custodian who shall have general charge of and attend to the letting and the collection of rentals.

**Note:** See Sec. 203, this book.

(Acts 1903, p. 231, Sec. 5917.)

**429. Division of ownership—Expenses—City may join.** Boards may join with a city and by agreement with its proper body join together in the purchase of land and constructing and maintaining a market house and such public hall under the same roof. The proportion of the expense shall be determined by agreement before beginning the undertaking on an equal division in the purchase of land, construction and maintaining the foundation and roof, the city bearing all expenses of construction and maintaining the market house, and the Board the hall.

They may also unite in the employment of janitor, caring for lighting and heating on agreed terms deemed fair and equitable.

#### **PUBLIC WORK—OPEN MEETINGS—BIDS.**

(Acts 1913, p. 650, Sec. 5896a-b-c.)

**430a. Bidder not required to file earlier than meeting at which they are to be received—Open meetings of Board—Bidders entitled to attend.** Hereafter all municipal bodies, boards or officers of any municipality, township or county in this state, authorized by law to let contracts for public work shall have no authority to require any bidder to submit his bid at any time earlier than the open meeting at which it is to be received. All such meetings for receiving bids shall be open to which the public and all bidders shall be entitled to attend.

**430b. Contracts let otherwise, null and void.** All contracts for public work by any of the boards or officers mentioned in section 1 of this act which are not let in conformity with the provisions of this act, shall be void.

**430c. Act is supplemental one.** This act shall be construed as supplemental to the laws now in force relating to the letting of contracts for public work, and shall not repeal or amend any of such laws except such as are contrary to the provisions hereof.

#### **PUBLIC FRANCHISES.**

(Acts 1913 p. 286, Sec. 8942b-f.)

**431. 1913, Public franchise act—Advertisements—Amendments—Duties of Board—Further amendments.** Whenever the Board desires to enter into a franchise, grant or contract, granting the use, over, under or along any public highway, street or alley, to any person, firm or corporation for personal or private gain, or for erection of any pole, wire, track, pipe, cable or conduit, the Board shall determine the exact form in which such franchise, grant or contract is to be finally adopted.



The Board shall fix a time not less than fifteen days thereafter at which such franchise will be finally considered. Protest against granting the franchise may be filed by any taxpayer. Parties to whom the franchise is to be given shall at their expense, cause the full and complete text of such franchise to be published at least one week before said hearing, with time and place, in two daily newspapers of general circulation to be indicated by the Board in such county, and printed in the English language, provided the county contains a city of the first, second or third class.

In all other counties such contract shall be published in any newspaper, printed in the county, city or town. Such parties shall also post a copy of such franchise in ten public places in such county.

The Board shall require proof of the required publication.

At the time fixed, the Board shall consider any protest which may have been filed by any taxpayer, who may appear in person or by attorney and present argument against such grant.

If after the required publication any amendments, changes or alterations are made or agreed upon, in such event, the Board shall cause the publication as before of the full text of each section which has been changed and agreed upon.

The Board may then grant such franchise, unless otherwise ordered, by the Board, the expense of such second publication shall be made by the interested party.

Proof of such second publication is required to be made by such party.

The act fixes the price of \$1, per square of 250 ems, as compensation for the required publications.

**Note:** Boards of public works, common councils and trustees of incorporated towns have jurisdiction of the granting of franchises over their streets and alleys.

### PUBLIC BUILDINGS.

(Acts 1913, p. 349, Sec. 5917a.)

**432.** When Board, with council's consent, may convey hall to city or town. In any county where there has been erected a public hall at the expense of the county, by authority of an act approved March 8, 1913, the Board, by the consent of the county council, given at any regular or special session, may convey such hall, and the land connected therewith to the city or town wherein located, upon the consideration that said city or town maintain the same for the use and purposes set out in the act of March 9, 1903, giving authorization for the erection of such public hall.

### PARKS.

(Acts 1911, p. 589, Sec. 6079a-f.)

**433.** Board may sell park grounds when abandoned by city. When the county is the owner of lands situated within one and one-half miles of the limits of any city within the state, it shall be lawful for the Board to authorize such city to use any part of such land for park purposes.

Forests existing on such land shall not be cut down nor destroyed, and the order of the Board in granting its authority to such city shall fix all conditions, restrictions and limitations.

The title to such land shall remain in the county and shall be retained by such city so long as maintained as a public park.

When abandoned by the city, the Board may dispose of such land as other lands of the county are sold and turn the proceeds into the county treasury.

**Note:** For use of fair grounds for park purposes see Sec. 10, this book.

### PURDUE UNIVERSITY.

(Acts 1877, S. p. 60, Sec. 6858.)

**434a. County students—To be appointed by Board.** The Board of Commissioners of each county in this state may appoint, in such manner as it may choose, two students, or scholars, to Purdue university, who shall be entitled to enter, remain, and receive instruction in the same, upon the same conditions, qualifications and regulations prescribed for other applicants for admission to, or scholars in, said university: Provided, however, That every student admitted to said university by appointment, by virtue of this act, shall in nowise be chargeable for room, light, heat, water, tuition, janitor or matriculation fees; and said student shall be entitled, in the order of admittance, to any room in the university then vacant and designed for the habitation or occupancy of a student; and such student so admitted shall have prior right to any such room, subject to the rules of the university, over any student not appointed and admitted as aforesaid.

**434b. When vacancy may be filled.** No more than two students at the same time from any one county shall be entitled to admittance to said university, under the provisions of this act. But the Board of Commissioners of each county may, from time to time, appoint as aforesaid, to any vacancy in its appointments.

### RAILROADS.

(Acts 1 R. S. 1852, p. 409, Sec. 5262.)

**435. When railroads may condemn lands of county—Procedure.** Any railroad corporation requiring land for its purposes belonging to the county, the Board may grant such lands to such corporation upon such terms as may be agreed upon.

If they shall not so agree, the same may be taken by the corporation in the same manner as provided in other cases.

(Acts 1915, p. 156, amending Sec. 5464.)

**436a. Public aid by townships—Petition—Election—Proceedings before Board.** Seventy-five or more freehold voters of any township may file a petition with the Board asking for an election to be held in such township to determine whether the township shall aid a proposed construction or reconstruction of a railroad through such township by

taking stock in the company or by donating money thereto. The petitioners shall also file bond payable to the state with freehold sureties, to the approval of the Board, conditioned to pay the cost of such election and all other expenses of the proceeding in case the proposition fails to carry.

If the Board shall find that the petition has been properly signed by the required number of freehold voters, and that the proposed construction or reconstruction will be of public utility and of sufficient benefit to the citizens of the township, it shall cause the petition to be entered at length upon the records of the Board.

(Acts 1875, p. 70, Sec. 5466.)

**436b. When elections shall be held.** The Board shall thereupon order an election to be held on a specified date, not earlier than thirty nor more than sixty days from such time, for the purpose of taking the votes on the petitioned appropriation in aid of such organized railroad.

**436c. Newspaper publication of election required.** Newspaper notice for four weeks' publication and posting of printed hand-bills in ten public places shall be given by the auditor of such election, and all proofs of same shall be entered of record.

(Acts 1869, S. p. 92, Sec. 5476.)

**436d. When election favorable—Tax levy.** In the event that a majority of votes cast at such election is in favor of the appropriation, the Board at its ensuing June (September) session shall levy a special tax in such township, of at least one-half of the sum specified in the petition, but not exceeding one per centum of the whole taxable property.

If this sum does not include the whole amount, then the residue shall be levied the following year.

(Acts 1879, p. 46, Sec. 5478.)

**436e. Board may subscribe for stock in behalf of township.** After the assessment has been provided for the Board may take stock in such railroad company, from time to time, in the name of the proper township, and pay for same, when taken, out of the moneys so collected; or it may donate such money to the company for purpose in aiding in its construction from time to time during the progress of the work; provided that the railroad company completes its contract as to rates or other conditions mentioned in the petition, all of which shall be made of record on the records of the Board.

(Acts 1869, S. p. 92, Sec. 5479.)

**436f. When Board may advance payments for township—How refunded.** If, after the special tax shall have been levied, as before mentioned, and before it is collected, and such railroad has been so far completed as to be entitled to receive the money which the Board is authorized to donate, the Board may pay the same out of any moneys in the county treasury, same to be refunded to the county when such special tax has been collected.

(Acts 1869, S. p. 92, Sec. 5480.)

**436g. Restrictions in payment—Location and completion in township.** Boards are restricted in such payment of a donation to the railroad company, until the road is permanently located, and work done and paid for by the company equal to the amount of such donation then paid. Not more than 50 per cent. of the money voted shall be paid the company until the iron is laid and a train of cars shall have passed over the entire length thereof in such township.

(Acts 1875, S. p. 70, Sec. 5481.)

**436h. Requirement of railroad before settlement for donation.** After the collection of such levied tax, and the subscription shall have been made on behalf of the township, and the railroad company having fully completed its road as covered in the petition, so that a train of cars shall pass over same, the railroad company shall then have the right to demand and receive the money as intended.

Any petitioner or any taxpayer of the township may compel the Board to make the payment by mandate.

(Acts 1869, S. p. 92, Sec. 5482.)

**436i. When railroad forfeits rights to donation—Board's extension of time.** Failure on the part of the railroad company to commence work upon the railroad in said county within one year of the levying of the tax, or failure to complete the same within three years from such levying of the tax, shall forfeit the rights of the company to such donation, unless the Board for good cause shown, shall give not to exceed one year's farther time in which to complete.

In the event of a forfeiture the money raised by such special tax shall go into the general fund of such township.

**Note:** This section must be read in connection with Sec. 5494 Burns R. S., Sec. 437, this book.

(Acts 1915, p. 158, amending Sec. 5488.)

**436j. Per diem of election officers—Expense of election.**—The officers conducting the elections, provided in this act, shall be allowed the same pay as is allowed for like services in case of a general election. Should the election result in favor of a railroad appropriation, the expense of the election, after being paid by the county or township, as the case may be, shall be charged against the railroad company benefited, and deducted out of the first moneys collected by virtue of the appropriation. Should the election result in opposition to a railroad appropriation, the expenses of the election and the cost of the proceedings shall be paid by the petitioners.

(Acts 1873, p. 184, Sec. 5493.)

**436k. Location of road precedes tax.** No tax shall be placed upon the duplicate of any county, for the purpose of taking stock or making donations to railroad companies, by any county or township pursuant to the provisions of an act entitled "An act to authorize aid to the construction of railroads, by counties and townships taking stock in and



making donations to railroad companies," approved May 12, 1869, until such railroad shall have been permanently located in the county or township making the donation or taking the stock.

(Acts 1875, p. 121, Sec. 5494.)

**437. When suspended collection of taxes may be reinstated.** The act of 1875, relates to the suspension of the collection of taxes for payment of aid to railroads, where the county or township has voted such appropriation, either for payment of stock or as a donation.

In the event that the railroad company shall not, within five years from the time of placing such tax on the duplicate, have expended in actual construction the amount of such appropriation in the township or county, upon the petition of twenty-five freeholders of such county, after thirty days public notice preceding a meeting of the Board, the Board may cancel or annul a subscription of stock or donation.

When, however, the Board is satisfied that the amount of work done by the railroad company is equal to such subscription of stock or donation, it becomes the duty of the Board to order such tax to be collected at once as though such had not been suspended.

Note: See Sec. 436i, this book.

(Acts 1872, S. p. 49, Sec. 5504.)

**438. A public aid by border counties to a railroad in adjoining state.** Public aid to a railroad by border counties in an adjoining state is made lawful by the act of the special session of 1872. The process before the Board is quite similar in all matters to the law above explained.

(Acts 1875, S. p. 69, Sec. 5522.)

**439. When Board may grant right of way on county road.** The Board is empowered to grant the right of way to a railroad company, on any county road leading from a city of more than 40,000 to a suburban town in the county, upon the petition of the owners of three-fourths of the real estate bordering such road.

(Acts 1915, p. 148.)

**439a. Highway Crossings—Cities 20,000 or less.** Whenever the railroad commission shall come to conclusion, whether on account of the topography of the ground at the crossings, or on account of the great number of travelers using any crossing of a highway and steam railroad, or interurban railroad, or for any reason deemed by said commission to be sufficient, that the grades of such crossing should be separated, and it shall be found to be practicable to do so, said commission shall serve with notice the railroad company or companies, and also serve with notice the Board of Commissioners of the county or counties in which such highway crossing is located. Said notice shall set out that said commission on the day named will consider the matter of separation of the grades at such crossing and said railroad commission of Indiana shall have jurisdiction of the parties and the subject matter in said proceedings and shall hear and determine the matter, and if satisfied that said crossing is dangerous to life

and that safety and the accommodation of the public requires that the grades thereof shall be separated, and that it is practicable to so separate said grades, said commission may so order and shall in said order prescribe the manner in which such separation shall be accomplished, and the cost of such separation shall be borne one-fourth ( $\frac{1}{4}$ ) by the county and counties in which such grade is separated and three-fourths ( $\frac{3}{4}$ ) by the railroad company or companies, and whenever the commission may order any such grades separated it may, if it shall deem it best, relocate or consolidate highway crossings over railroads, street railroads, interurban street railroads, or suburban street railroads in this state and may relocate or consolidate highways leading to any such crossing: Provided, That if any of the parties to such proceeding shall fail or refuse to obey the orders of the commission the commission may proceed in any circuit or superior court of any one of the counties in which said highway crossing may be located, to enforce its orders: Provided, also, That the provisions of this section shall not apply to cities of over twenty thousand (20,000) population, according to the last preceding United States census: Provided, further, That the provisions of this act, other than those contained in this section, shall not apply to cities and incorporated towns.

#### **RATS—EXTERMINATION.**

(Acts 1913, p. 638, Sec. 7648j-p.)

**440. Act of 1913—Duties of Board—When expenses chargeable to county.** The act of 1913 declaring a rat infested property to be a public nuisance, among other matters, makes it the duty of the Board, with the consent of the council, whenever it may by resolution determine that it is necessary for the preservation of the public health, or to prevent the spread of contagious or infectious disease, or to prevent great damage to crops, grain, food, or other property, may appropriate moneys to purchase traps, poison or eliminating agencies for the destruction of rats.

This may be done under the direction of the Board, or the local health officer, or the Board of Health.

Similar powers are granted to city councils and town boards. The expense arising from such extermination of rats shall be a charge against county, town or city, that instigates the proceedings.

#### **RECORDER—COUNTY.**

(Acts 1 R. S. 1852, Sec. 9491.)

**441. Official bond, \$4,000 to Board's acceptance.** The county recorder shall file his official bond in the penal sum of \$4,000, which shall be approved by the Board.

(Acts 1 R. S. 1852, p. 428, Sec. 9498.)

**442. Required to keep office at county seat.** The recorder shall keep his office at the county seat in a room to be provided for that purpose by the Board.

**REINSTATEMENT OF RECORDS.**

(Acts 2 R. S. 1852, p. 505, Sec. 1300.)

**443a. Total or partial destruction of records—Auditor's duty.** In the event of the total or partial destruction of any of the records of the county, the auditor shall forthwith notify the members of the Board to meet at a designated time and place, and the Board is authorized to so meet from time to time on adjourned meetings for the following twelve months, if rendered necessary by the destruction of such records.

**443b. Duty of Board as to copies of records in the state—Adjourned meetings.** The Board, when so met, shall make list of records and documents furnished by the state government, and shall transmit the same to the governor, whose duty it is to notify the several officers of the state whose duties shall be to replace all printed or written pamphlets, documents, maps and other papers certified to have been destroyed.

(Acts 1865, p. 83, Sec. 1308.)

**443c. When Boards shall appoint commissioner.** In the event that the files of the several courts, or of the several officers of the county have been destroyed, in whole or in part, the Board shall appoint a commissioner whose duties are to secure evidence and enter of record all matters touching the lost records of such courts and officers.

The county recorder shall record all deeds and other instruments in writing.

**443d. Boards may remove commissioner for cause—Appointment of successor.** The Board may at any time remove such appointee for incompetency, unnecessary delays or neglects of duty, and appoint a successor.

(Acts 1865, p. 83, Sec. 1323.)

**443e. When Board may cause new assessment rolls—Collection of taxes.** The Board shall cause new assessment rolls and duplicates, when destroyed, to be made out under the same regulations that the originals were made, and all other necessary arrangements proper that the treasurer may be enabled to collect all taxes due the county.

**RELINQUISHED TRUST.**

(Acts 1903, p. 254, Sec. 6042.)

**444. Concerning inadequate donation for home, indigent women or orphans—Duty of auditor—Duty of Boards.** In any case where there has been devised or bequeathed to the county, in trust, for purpose of establishing a home for indigent women, worthy poor, or orphan children, and it is found that such amount of property is inadequate to carry out the provision of the trust, without an additional appropriation from the county, and that the administration of the trust will not be of substantial benefit to the county, the Board shall relinquish such trust, whereupon the property therein devised and bequeathed, shall vest in the legal heirs of the donor or testator according to the laws of the state.

It then becomes the duty of the auditor to file his certified transcript of the Board's finding with the recorder of such county where the real estate is situated, who shall record same in the deed record of such county.

### RESIGNATIONS.

(Acts 1 R. S. 1852, p. 233, Sec. 9141.)

**445a. How and when made to auditor.** Resignations of all officers, who receive their certificates of election or appointment from the auditor or board of judges, shall be transmitted to the auditor.

(Acts 1 R. S. 1852, p. 233, Sec. 9142.)

**445b. How and when made to the court or Board.** Whenever any county officer shall resign, he shall give notice thereof to the court or Board having the power to appoint a successor.

### REWARDS.

(Acts 1899, p. 381, Sec. 2559.)

**446a. \$100 for information as to bribe of voter.** A reward of \$100 is payable out of the treasury of the county, upon a valid claim, to anyone having knowledge or information of the violation of the provisions against the sale or barter, or offer of sale or barter of votes, or offers to refrain from voting at any general, special or primary election, and who shall procure or furnish, or cause to be procured or furnished the testimony necessary to secure the conviction of such violator.

(Acts 1899, p. 132, Sec. 6034.)

**446b. \$500 for arrest and conviction for murder and lynch.** That whenever any Board of County Commissioners of any county in this state shall be satisfied that there has been a murder or lynching of a human being committed in their county, and that the perpetrator or perpetrators, of either of such crimes is unknown, or, if known, has escaped to parts unknown, then, in either such case, such Board of County Commissioners shall have the right, power and authority to offer and pay a reward in any sum not exceeding five hundred (\$500) dollars for the discovery, arrest and conviction of the perpetrator, or perpetrators of either of said crimes, or, for the arrest and conviction of the perpetrator, or perpetrators of either of said crimes, if known, but who has, or have escaped to parts unknown: Provided, That the prosecuting attorney of the county in which the offense was committed shall not receive or accept any reward.

### RULES OF BUSINESS.

(Acts 1 R. S. 1852, p. 224, Sec. 5982.)

**447. Boards required to adopt.** The law specifically requires Boards to adopt regulations for the transaction of business; and in trial of causes the Board shall comply, so far as practicable, with the rules for conducting business in the circuit court.



**SANITARY DISTRICTS.**

(Acts 1913, p. 821, Sec. 6174b.)

**448a. The 1913 law, preliminary proceedings.** Under the provisions of an act approved March 15, 1913, whenever any area of contiguous territory within a county shall contain two or more incorporated municipalities, so situated that the public health will be better preserved by a common outlet for drainage, or a joint system of sewerage, the same may be incorporated into a sanitary district under the act.

**448b. Duties of Board as to petitions and requirements—Newspaper publication.** Any 500 voters, resident freeholders, 100 being resident of each municipality to be included in such district, may petition the Board, asking an order for an election to be held to vote whether or not such district shall be organized. Such petition shall be addressed to the Board and shall contain a definite description of the territory involved, likewise, the name of such proposed district.

Upon filing the petition, it shall be the duty of the Board, under the power and authority given it under the act, to consider such boundaries as to whether or not the same shall be the same as described therein or otherwise. Notice by a twenty-day publication in one or more newspapers, published in each of the municipalities, shall be given by the Board, after which it will give consideration to the petition.

**448c. When Board may order an election.** All persons in such territory shall have an opportunity to be heard at such meeting upon the question of location and boundary, and to make suggestions thereto relating; and the Board after hearing such mention, shall determine the limits of such proposed district and to that end may alter and amend the petition.

The Board shall then fix a day for holding such special election, calling a day, not less than thirty nor more than sixty days thereafter. The Board shall give newspaper notice, published in each of the several municipalities, at least thirty days before the date then fixed for such election, and shall include in such notice the purposes thereof. Each legal voter residing within such territory shall have a right to vote for or against the organization of the sanitary district. The election shall be had, as nearly as practicable, in conformity with the general election laws of the state.

The Board shall canvass the returns of the special election and record same in its proceedings. If a majority of the votes cast in each municipality, and in each part of a municipality, when the whole is not included within the proposed district, is in favor of the establishment of such district the Board shall enter an order incorporating the sanitary district, and it shall be deemed as organized.

**Note:** If the proposition fails to carry in any one municipality, the sanitary district fails.—Editor.

**448d. Trustees appointed by governor—Payment of election expenses—Reimbursement.** The expenses of such election shall be paid by the Board. In the event that such sanitary district shall be estab-

lished and incorporated, it shall repay such amount to the county within two years.

The trustees of the incorporation shall be appointed by the governor.

### SCHOOL FUNDS.

(Acts 1865, p. 3, Sec. 6184.)

**449. Liability of county—Auditor's duty—Annual interest—Annual deficit.** The several counties of the state are held liable for the preservation of the principals of the congressional school fund as well as the common school fund which, from time to time, has been distributed to them, and all other accretions to the latter fund.

The county is likewise liable for the payment of the interest on these funds, which must be full and complete every year.

The auditor is required annually to report the condition of these funds to the superintendent of public instruction who, in the event of a deficit, shall direct the attention of the Board and county auditor to same when the Board is required to provide for such deficit.

(Acts 1865, p. 3, Sec. 6189.)

**450. Requirement of Boards in formation of civil townships.** In the formation of civil townships, the Board is required to conform the boundaries with those of a congressional township, so far as it is practicable to do so.

(Acts 1883, p. 79, Sec. 6209.)

**451. Duties in the sale of school lands.** When any school lands, in section 16 of any congressional township, have been forfeited to such township for failure to pay the principal or interest, on the purchase price thereof, and such lands remain unsold for three years for the reason that amount due thereon is in excess of its value, the land may be reappraised and sold according to law.

(Section 6210.)

**452. Deficit to be made up by Board, when.** If such second or other sale is for a sum less than the price of the original sale, the Board may make an appropriation to make good the deficit.

(Acts 1901, p. 152, Sec. 6234.)

**453. When council may authorize loan of to county.** When the common school fund, the congressional township school fund, or the permanent endowment fund accumulates in the county treasury to the amount of \$1,000 or more, for a period of thirty days, or more, and remains unloaned, in such event, if the county does not have sufficient money to pay the debts and obligations, then owing, the council can lawfully borrow such money, or any part thereof, for a period not exceeding five years.

(Acts 1901, p. 152, Sec. 6235.)

**454. When county borrows—Duties of president of council.** When a loan is thus made, a proper record shall be made of the order of the

council, and a written obligation signed officially by its president, payable to the State of Indiana, specifying all facts and handed to the auditor to be properly entered and deposited with the other school fund loans.

(Acts 1905, p. 25, Sec. 6257.)

**455. When county may pay expenses of making school fund loans.**

The Board may, at its discretion, pass an order, at any regular session, to bear the expense of making school fund loans, covering expense of appraisers, abstract of title and record of mortgage, provided that such expense shall not exceed one per cent of such loan, and further that such expense shall not be paid unless the loan be made.

The Board may at any subsequent regular session repeal such order.

Councils are required to care for this expense by appropriation, when such an order exists.

(Acts 1899, p. 55, Sec. 6274.)

**456. When Board may take conveyance from owners.** When lands have been mortgaged to the common school fund or the congressional school fund and there is a default in the payment of interest, or the interest and principal, and the auditor is unable to sell such land for a sufficient sum to pay such loan, as provided by law, and the county shall pay such loan to the school fund, the Board may at any session, if deemed for the best interests of the county, accept in the name of the county, a conveyance of such land from the owners and take possession thereof.

(Acts 1899, p. 55, Sec. 6275.)

**457. When rights of state inure to county.** In cases where school fund lands have been bought in by the auditor on account of such fund, and have been reoffered for sale, and no bid received sufficient to pay principal, interest, damages and costs, as otherwise provided by law, and the county shall pay the same to said school fund, the rights of the state shall inure to the benefit of the county; whereupon the auditor may proceed to collect the amount due the county by suit foreclosing such lien, and recover a personal judgment against the mortgagor for amount due the county, and the auditor may, in the same suit, recover possession of the mortgaged premises, and quiet title thereto.

(Acts 1899, p. 55, Sec. 6276.)

**458. When Board may cause order of sale—Deed executed to county.** The Board of Commissioners, when the county in either case has paid the principal and interest due such school fund for the purpose of reimbursing the county, if, in the opinion of the Board, it shall be to the best interest of the county, may cause the land, which has been ordered sold in such decree of the court, to be purchased at such judicial sale in the name of the county for any price, or any maximum price it may fix, not in any case exceeding the full amount of the principal, interest, cost and accrued costs due on such decree at the date of such sale. The officer making the sale shall execute a deed to the county for such real estate.

(Acts 1899, p. 55, Sec. 6277.)

**459. Board may lease land until sold—Auditor collects rents.** The Board may lease the land, thus acquired, until it is sold, at periods not exceeding one year. Such lease to be in writing and spread of record on the records of the Board.

The auditor shall be authorized to collect such rents, and if in kind, to sell the same in the market and pay proceeds to the treasurer as a part of the general fund of the county.

(Acts 1899, p. 55, Sec. 6278.)

**460a. When acquired lands may be ordered to be sold—Duties of auditor—Objections by taxpayer.** The Board at any session may order the auditor to sell such real estate at public or private sale, such order to fix the terms of sale, in cash or in installments with interest and security, as Board may require, being limited to a credit of five years. Before making such sale the auditor shall cause such land to be appraised by three disinterested freeholders of the county who are acquainted with the land. Such appraisers shall be sworn to appraise the land honestly and impartially, which oath shall be endorsed upon the appraisement. The auditor shall advertise such sale for at least thirty days in a newspaper of the county and by the posting at least five notices within the situated township, and one at the court house door. The land shall sell for not less than the appraised value.

If not sold in a reasonable time, the Board may order a reappraisement and alter the terms, giving the same notice as before. The auditor shall report the sale when made at next regular session of the Board.

Objections to the sale may be filed within three days from the first day of the term when same was reported by any interested taxpayer, which objections shall be determined by the Board.

**460b. Objections removed — Resale ordered — Certificate—When deed to be made by Board—General fund.** A resale may be ordered after the removal of all objections. When the sale is made by payments in installments, a certificate shall be given to the purchaser who is entitled to possession of the land. Such certificate is assignable, and deferred payments with accrued interest may be made before their maturity.

Upon final payment of the purchase money, which belongs to the general fund of the county, the Board shall execute its deed to said purchaser.

(Acts 1865, p. 3, Sec. 6285.)

**461. Annual report condition of school fund—Full particulars—Auditor and treasurer.** County auditors and treasurers shall annually report to the Board at the June session all matters concerning the common school fund and the congressional school fund, embracing, distinctively the total amounts; amounts of additions with their source; condition as to safety; amounts safely and unsafely invested; amounts uninvested; losses if any; and amounts of interest collected and due and uncollected.



(Acts 1865, p. 3, Sec. 6286.)

**462a. June complete examination of school funds by Board in presence of auditor and treasurer—Deficits to be made good at June meeting.** The Boards of County Commissioners shall, annually, at their June sessions, in the presence of the auditors and treasurers, examine said reports, the accounts, and proceedings of said officers in relation to said funds, and the revenue derived from them. They shall compare with said reports, the cash, the notes, mortgages, records, and books of said officers, with a view to ascertain the amount of said funds and their safety; and to do whatever may be necessary to secure their preservation and the prompt payment of the annual interest thereon as the same becomes due; and make up to said fund losses which have accrued or may accrue.

**462b. Items required to be covered in report—Separation of funds.** Each Board of County Commissioners, at said session, shall make out a report, in writing, of the result of such examination, showing—

First. The amounts of said funds at the close of last year.

Second. The amount added from the sale of land within the year.

Third. The number of acres of unsold congressional township school lands and the approximate value thereof.

Fourth. The amount added from fines and forfeitures.

Fifth. The amount added by the commissioners of the sinking fund.

Sixth. The amount added from all other sources.

Seventh. The total amount of the funds.

Eighth. The amount refunded within the year.

Ninth. The amount relented within the year.

Tenth. The amount safely invested.

Eleventh. The amount unsafely invested.

Twelfth. The amount uninvested.

Thirteenth. The amount of fund lost since 1842.

Fourteenth. The amount of interest collected within the year.

Fifteenth. The amount of interest delinquent.

And in such report said Board shall distinguish between the congressional township fund and the common school fund; and in its account of the interest or revenue derived from said funds, it shall observe the same distinction.

(Acts 1865, p. 3, Sec. 6288.)

**462c. Duties of auditor, treasurer and Board—Record—Duplicate reports to state officers.** Such report shall be entered on the records of the Board; and copies thereof signed by the members, the auditor and treasurer, shall be transmitted to the auditor of state and superintendent of public instruction.

### SCHOOL TRUSTEES.

(Acts 1865, p. 3, Sec. 6426.)

**463a. Annual statistical report to county superintendent—Penalty.** School trustees of cities, towns and townships are required annually

to make certain statistical and financial reports, to the county superintendent, and on failure to comply, that officer shall, in writing, notify the auditor of the trustee's delinquency. The auditor is required to diminish the apportionment of such city, town or township in the sum of \$25 and to withhold the warrant from such trustee. Such penalty of \$25 and any further damages may be recovered by the Board by suit on such trustee's bond.

(Acts 1865, p. 3, Sec. 6429.)

**463b. Inspection of school matters, by Board.** The books, papers and accounts of any trustee, relative to schools, shall at all times be subject to the inspection of the county superintendent, county auditor and the Board.

(Sec. 6430.)

**463c. Service on, by summons or subpoena.** For the purpose of such inspection, these officers may, by subpoena, summon such trustee before them and require the production of such books, papers and accounts, after a notice of three days.

(Acts 1865, p. 3, Sec. 6431.)

**463d. When errors found to correct—When fraud found to remove.** If any such books and accounts have been imperfectly kept, the Board may correct them. If fraud appears, the Board shall remove the person guilty thereof.

### SCHOOLS.

(Acts 1907, p. 310, Sec. 6458.)

**464. Board's duty in relation to procure transfer—Orphans' home—Custodial institution—Trustees's duty.** Dependent children in orphans' home, or a custodial institution, shall be educated by the township trustee or school boards of the corporation in which the home or institution is located.

Boards, or other authorities who place such children in such homes, shall immediately give notice to the officers of the school corporation from which such child came, that such child has been placed in such home or institution, whereupon such trustee or school corporation shall issue a transfer of such child to the school corporation where the home or institution is located.

### SPECIAL SESSIONS OF BOARD OF COMMISSIONERS.

(Acts 1863, p. 19, Sec. 5975.)

**465. Who may call special sessions of the Board.** Special sessions of the Board may be called whenever the public interests require it, first by the county auditor; secondly, by the clerk of the circuit court, in case of the death or disqualification of the county auditor; thirdly, by the recorder of the proper county, in case of disqualification, from any cause, or both auditor and clerk.

(Acts 1899, p. 67, Sec. 5976.)

**466. When by auditor—Business confined.** The county auditor is required to mention specifically in his call for a special meeting of the Board, for what special business such call is made; and it shall be unlawful for the Board to transact any business other than that stated in such call.

(Acts 1863, p. 19, Sec. 5977.)

**467. When six days' notice required.** Unless it is the opinion of the officer making a call for the special meeting of the Board, that an emergency exists, at least, six days notice shall be given, the officer fixing the time at his discretion.

(Acts 1863, p. 19, Sec. 5978.)

**468. How governed by the laws in force.** Special sessions of Board of Commissioners, called in pursuance of the act, shall be governed by the laws now in force regulating the proceedings and defining the powers of County Commissioners at special sessions.

#### SETTLEMENTS.

(Acts 1899, p. 343, Sec. 5948.)

**469. The January settlement with the treasurer.** The treasurer shall make a complete settlement with the Board at the January term of each year, for the preceding calendar year, and a copy of the settlement sheet shall be copied in the order book of the Board.

(Acts 1879, S. p. 108, Sec. 6086.)

**470. When settlement is not binding and conclusive—How reopened.** Settlements made by Boards with any officer, shall not be binding or conclusive in the event that such officer has failed to account for any or all moneys collected or received by virtue of his office, or a duty failed or omitted; and he is still held on his bond for such amount, or on the other hand, if, through inadvertence, mistake or other cause, he has accounted for and paid to such Board more money than was equitably or justly due from him, same shall be repaid and released, conditioned that such repayment is for moneys that he was authorized by law to collect; and in either case the statute of limitation does not bar.

#### SHERIFF—COUNTY.

(1 R. S. 1852, p. 224, Sec. 5979.)

**471. Duties of, as bailiff.** The sheriff, by himself or his deputy, shall attend the meetings of the Board and execute its orders.

(Acts 2 R. S. 1852, p. 10, Sec. 9428.)

**472. Official bond of \$5,000—Approval.** The county sheriff shall give bond in the penal sum of \$5,000, to be approved by the Board.

**Note:** The courts have decided that it is the duty of the Board to meet, without notice, within ten days after the commencement of the term of the sheriff, and after the receipt of his commission, to approve his bond.

(Acts 2 R. S. 1852, p. 10, Sec. 9429.)

**473. His duty as to county jail.** The county sheriff shall take care of the jail and serve all processes directed to him from the Board, according to law.

(Acts 1879, S. p. 130, Sec. 9434.)

**474. Compensation for special services.** Allowance for special services, where no provision has been made by law for its payment, as enacted in Acts 1879, S. p. 130, has been suspended by the 1905 act.

**Note:** But see Sec. 7335, as amended, Acts 1915, p. 634.

### **SOLDIERS' MONUMENTS.**

(Acts 1891, p. 369, Sec. 6044.)

**475. Boards may accept donations—Record of donations.** Boards are authorized to procure a proper book for the purpose of receiving subscriptions and donations for any person or persons desiring to contribute for the erection of a monument or memorial hall to those who have or may lose their lives in or from service in the civil war.

Such book to be properly preserved by the county auditor, and shall be free to the inspection of any one who has lost friends or relatives in said war for the suppression of the rebellion.

**Note:** See Secs. 399a-e, this book.

### **SPECIAL COUNTY COMMISSIONERS.**

(Acts 1913, p. 430, Sec. 5982a.)

**476. When circuit court may appoint—Duties and powers—Duty of auditor.** Whenever in a trial before the Board of Commissioners it finds that two or more of the members are disqualified, they shall immediately decline to act further in such trial.

Within ten days thereafter the auditor shall certify the entire proceedings to the circuit court who if satisfied that such actions were right, shall appoint two or more, as the case may be, competent persons to act as special County Commissioners in the trial of such cause. Each such appointee shall be qualified and his oath entered on the records, and each shall have power together with the other members to determine such cause to its completion.

### **STATE FARM.**

(Acts 1913, p. 660, Sec. 9926a.)

**477a. Intended as correctional institution.** Under the act, 1913, a correctional institution was established to be known as the Indiana State Farm, intended for male violators of the law.

The act provides for the selection of a site, and upon being equipped with buildings and upon the proclamation of the governor, male prisoners, who may be committed to the county jail or work house, may be confined to the Indiana state farm. Boys committed to the Indiana boys' school, at Plainfield, cannot be confined on the penal farm.



(Acts 1913, p. 660, Sec. 99261.)

**477b. Duty of superintendent as to discharged prisoner—Transportation paid by county.** Section 9, of the act, provides that the sheriff shall receive the same fees and mileage for committing a prisoner to the farm, as received for a prisoner to the state reformatory; and that the superintendent of the farm, upon the discharge of such prisoner shall secure a railroad ticket and deliver to the proper railroad conductor, to such point as the prisoner desires to go not farther in distance from the farm than the place from whence he was committed. All expense thus incurred shall be allowed by Board of the county from whence the prisoner was committed.

### **STREAMS—POLLUTION.**

(Acts 1909, p. 60, Sec. 7597.)

**478. Complaint to state board of health.** Boards are authorized to make a complaint, in writing, to the state board of health concerning the pollution of streams, when such act is deleterious to public health and comfort.

### **STREAMS—NAVIGABLE.**

(Acts 1 R. S. 1852, p. 373, Sec. 6050.)

**479a. Board's authority to declare.** The Board is authorized to declare any water course, in its county, navigable upon the petition of twenty-four freeholders of the county who reside in the vicinity of such stream.

See also section 483a herein.

**479b. Procedure of Board on petition.** The Board shall cause an examination of the stream to be made by some suitable person, who shall report the length of same to the Board; and how much thereof is capable of being made navigable; and if such report satisfies the Board that such stream is of public utility, as a navigable one, it shall confirm and cause such report to be recorded.

See also section 483b herein.

(Acts 1905, p. 584, Sec. 2650.)

**479c. Unlawful to obstruct U. S. government stream.** It is unlawful to obstruct any navigable stream by an artificial barrier, in or across the same, which may not have been surveyed and sold as land by the United States, and on conviction subject to a fine of \$5 to \$500 for every week such obstruction so remains.

### **STREAMS.**

(Acts 1911, p. 352, Sec. 2667ab.)

**480. Law of 1911—Interfering with ferry boat at its landing—Penalty.** Under an act of 1911, it is unlawful to interfere with a ferry boat at its landing by obstructing with any kind of water craft, or otherwise, that will prevent the ferry boat from landing. The fine on conviction is \$10 to \$100.

(Acts 1873, p. 226, Sec. 6057.)

**481. Appropriation to remove obstructions.** The Board has power to appropriate such sums as it may deem necessary, not exceeding \$800, to remove obstructions from streams which are declared navigable by law.

**Note:** See also Sec. 483 herein. Commissioners can not make appropriations, but can recommend.—Attorney-general.

#### **STREAMS—CHANGE IN COURSE.**

(Acts 1883, p. 192, Sec. 6058.)

**482a. Powers of Board—Protection by retaining wall.** Power is given the Board under Acts 1883, to straighten, change the course, direction or location of any stream or body of water, and to protect by retaining wall, or otherwise, its banks from washing or cutting by the flow of water; and to change any watercourse, or the flow of any stream or body of water within the limits of the county.

(Acts 1883, p. 192, Sec. 6059.)

**482b. Petition to Board—Viewers and surveyor—Newspaper publication.** Upon the petition to the Board of two or more landowners whose lands will be assessed for the cost of such improvement which is specially mentioned therein, and the filing of a bond signed by one or more responsible freeholders, conditioned for the payment of the preliminary survey and report, if the improvement shall not be finally ordered, the Board shall appoint three disinterested freeholders of the county as viewers, and a competent surveyor or engineer, to proceed upon a fixed day, to examine and to lay out the petitioned improvement, as in their opinion public convenience and utility require.

The auditor is required to give notice of the time and place of said meeting, and a description of the improvement, by three weeks' newspaper publication, next prior to such time, and where no newspaper is printed, he shall post printed posters in not less than ten public places along the line of the proposed improvement.

(Acts 1883, p. 192, Sec. 6060.)

**482c. Duties of viewers and surveyor—Requirements—Appeal—Claims for damages.** The viewers and engineer, or surveyor, having met at the fixed time and place, after having taken the usual oath, shall proceed to view such improvement petitioned for, and to assess and determine the damages sustained to the landowners where said proposed improvement is to be made, assessment of damages being confined to such owners as are minors, idiots or lunatics. All other owners are barred from damages, unless such owners, by self or agent, shall file with such viewers a written claim for damages for the appropriation of their lands for such improvement, within thirty days after the completion of the survey by the viewers.

Any aggrieved person upon filing cost bond, approved by the auditor, may appeal to the circuit court.

(Acts 1883, p. 192, Sec. 6061.)

**482d. Requirements as to report.** After the view and examination of the proposed improvement have been completed, the viewers and surveyor, or engineer, shall make report to the Board.

Such report shall embody: the damages claimed, and by whom claimed; the amount assessed to each claimant; an estimate of the expenses of said improvement; and the lands benefited by same and that ought to be assessed for such improvement. The act provides that lands which do not lie within two miles of the proposed improvement, shall not be assessed. It also provides that where there are lands liable to assessment, under the act, for the construction of two or more such improvements, the viewers shall consider that fact in assessing benefits.

(Acts 1883, p. 192, Sec. 6062.)

**482e. Duty of Board as to report.** Upon the return of the viewers' report, the Board shall, if in its opinion public utility requires the improvement, enter upon its record an order that the improvement be made. Such order shall state kind of improvement to be made and the width and extent of same, the lands to be assessed for the expense of such improvement.

Such order of the Board shall not be made until a majority of the resident landowners whose lands are reported as benefited thereby and ought to be assessed for the same; and until the owners of a majority of the whole number of acres of all the lands thus reported as benefited and assessed shall have subscribed the petition, or a duplicate thereof, and filed same with the auditor.

In the count for a majority, by the Board, the act gives details as to minor owners, life estate owners, omitted tracts, and other conditions which should have the reference of the Board.

**482f. Appointment of competent engineer.** After the Board has made its order for the improvement, it shall appoint a competent engineer or surveyor to superintend its performance and completion. He, with the approval of the Board, is empowered to make contracts for its construction, and the contractor may at once enter upon such performance under his superintendence.

The act provides for the kind of contract, and for notice of letting the contract by newspaper publication.

**Note:** See Burns R. S., Secs. 5896a-c, Secs. 430a-c, this book.

(Acts 1883, p. 192, Sec. 6063.)

**482g. Viewers to apportion expenses—Report—Action of Board—Newspaper publication.** When such improvement shall have been ordered by the Board, it shall immediately appoint three disinterested freeholders of the county, who shall upon an actual view of the premises, apportion the estimated expense upon the real property embraced in the order, according to the benefit derived from such improvement, and shall consider assessments made for former like improvements. When such committee has returned its report, the auditor is required to give public newspaper or posted notice for at least three consecu-

tive weeks, and mention therein when the Board will meet to hear the same. If there are no exceptions, the Board shall confirm the report.

The Board, sitting as a court and governed under the rules of other courts, shall hear testimony, summon witnesses and compel their attendance.

After such hearing the Board may either confirm, or refer to a new committee of three disinterested freeholders of the county, who with similar requirements as before as to notice, shall meet in like manner as the first committee, and after qualification, upon actual view make a new apportionment, or it may recommend the confirmation of the former report. Upon the return of its report to the Board, like proceedings are had as at the return of the first report, except that there is no further reference to a committee.

**482h. Final action of Board.** This final action shall be made a matter of record by the Board together with the report as confirmed, showing the apportionment of the estimated expenses upon the lands ordered to be assessed, as aforesaid.

Such assessments shall be placed upon a special duplicate by the auditor, furnished by the county, and such assessment shall be considered as a first lien on such lands, in the same manner as other taxes are.

All expenses and costs of the preliminary surveying shall be advanced by the county, and be refunded, as well as all other preliminary amounts advanced by the county.

**482i. Auditor to notify all interested persons.** The auditor shall notify by mail by a written or printed notice, every nonresident, stating the nature or extent of the proposed improvement.

Where postoffice address is unknown, such notice to be served on party controlling such real estate.

(Acts 1893, p. 192, Sec. 6064.)

**482j. Process of issuance of bonds.** For the purpose of raising the money necessary to meet the expenses of said improvement, the Board is authorized to issue the bonds of the county, maturing at intervals of two years, and not beyond eight years, bearing 6 per cent. interest per annum, payable semi-annually, to be sold at not less than par value. Such assessments shall be so divided, and so placed on the duplicate for collection, as to meet such maturing bonds and interest, and when collected shall be applied only toward the payment of the bonds and interest.

**482k. When delivery of bonds to be made.** There shall be no delivery of bonds or the payment of any money to the contractor, except on estimate of work done, as it progresses or is completed. The limit of issue of bonds, at any one time, shall not exceed \$100,000.

(Acts 1893, p. 192, Sec. 6065.)

**482l. Limit in compensation to persons employed.** The compensation of persons employed under this act shall be fixed by the Board, and shall not exceed \$3 per day, except where fixed by law.



(Acts 1893, p. 192, Sec. 6066.)

**482m. Requirements, when extends into adjoining county.** In the event that it may be desirable or expedient to continue the contemplated improvement into an adjoining county, similar proceedings as have been mentioned shall be had before the Board of the county where the extension is located.

(Acts 1893, p. 192, Sec. 6067.)

**482n. Errors can not be taken advantage of.** No person shall be permitted to take advantage of any error committed in any of the processes under and by virtue of this act, nor through the error of any person who is officially connected in any wise, with the proposed improvement, subject however to the right of appeal to the circuit court.

(Section 6068.)

**482o. How repairs are to be kept up.** Needed repairs in any such constructed work under this act, shall be provided for in same manner as is provided for in the original construction.

#### STREAMS (AS HIGHWAYS).

(Acts 1905, p. 521, Sec. 7672.)

**483a. Additional law—Board's authority—As a highway.** Boards have the authority, upon the petition of 24 resident freeholders residing in the neighborhood, to declare any stream or water course in such county as navigable.

**Note:** See also Sec. 479a, this book.

(Section 7673.)

**483b. Procedure before Board.** Upon such petition the Board shall cause an examination of the stream, proposed to be declared navigable, by some suitable person, who shall report to the Board the length, and how much thereof is capable of being so declared, when the Board shall confirm, if satisfied that such will be of public utility, and so declare, and cause to be made a matter of record.

**Note:** See also Sec. 479b, this book.

(Acts 1905, p. 521, Sec. 7678.)

**483c. Appropriation to remove obstructions.** Boards have power to use such sum as may be appropriated from the county treasury, if deemed necessary, to remove obstructions from legally navigable streams.

#### SUPERINTENDENT—COUNTY—SCHOOLS.

(Acts 1899, p. 240, Sec. 6395.)

**484. Board to furnish office.** The Board of County Commissioners shall provide and furnish an office for the county superintendent of their county, allow and pay all costs incurred by him for postage, stationery and records in carrying out the provisions of this act, upon his making to them satisfactory proof thereof.

(Acts 1913, p. 77, Sec. 6400a.)

**485. Additional compensation in certain counties.** In counties containing more than 77,000 population, according to last preceding U. S. census, Boards may allow an additional compensation to the county superintendent if it is deemed by the Board that it is justified by his additional labor. Such increase shall not exceed \$1,000 per year.

**Note:** At this date, the following counties, only, in the State are affected: Allen, 93,386; Lake, 82,864; Marion, 263,661; St. Joseph, 84,213; Vanderburgh, 77,438, and Vigo, 87,930.

(Acts 1911, p. 156, Sec. 6400b.)

**485a. Superintendent's traveling expense.** The traveling expenses of the county superintendent, not exceeding one hundred dollars (\$100) annually, incurred while in the discharge of his official duties within his county shall be paid by the county treasurer upon a warrant issued by the county auditor. The county superintendent shall make affidavit to the county auditor, before such warrant shall issue from the county auditor to the county treasurer.

(Acts 1911, p. 156, Sec. 6400c.)

**485b. Assistant superintendent.** The board of county commissioners may authorize the county superintendent to appoint an assistant to assist him in the execution of his official duties if in their judgment such an assistant is necessary. Such assistant shall be appointed by the county superintendent and shall work under his direction and supervision. Such assistant shall receive for his services rendered, an amount not to exceed three dollars per day for not to exceed one hundred and twenty days in any one year. Such amount to be paid by the county treasurer upon warrant issued by the county auditor.

### **SURVEYOR—COUNTY.**

(Acts 1913, p. 69, Sec. 9510a.)

**486a. General bond, not less \$5,000—Acceptance.** The county surveyor in each county in the State of Indiana, shall give a bond in a sum fixed by the Board of Commissioners in the county, provided that no such bond shall be for a sum less than five thousand dollars, payable to the State of Indiana, and that such bond shall be conditioned for the faithful discharge of all duties required of such surveyor, and also all duties required of him as civil engineer in the work of the county, including the preparation of plans and specifications for, and general supervision of, all bridges, turnpikes, roads, ditches, drains, levees, and all other civil engineer work which may be done by order of the Board of Commissioners of such county or by the order of the circuit or superior court of such county. And such bond shall be liable for any failure or default on the part of any such county surveyor in the discharge of any such duties required of him.

(Sec. 9510b.)

**486b. Board fixes amount of bond.** The Board of Commissioners of each county shall within thirty days after the taking effect of this act

by a proper order, provide the amount of bond which shall be required of the surveyor of such county, and such surveyor of such county shall, within ninety days after taking effect of this act, file a bond as herein provided in the office of the auditor of the county, which bond shall be approved by the Board of Commissioners of said county and signed by at least two freehold sureties thereof, or an authorized surety company.

(Sec. 9510c.)

**486c. Special bond not required.** After the giving of the bond as provided in this act, by the county surveyor, no other surety shall be required of any such surveyor for the performance of any official duty or as civil engineer or drainage commissioner or superintendent of any public work: Provided, however, That if at any time the Board of Commissioners of any county shall determine that the surety on the surveyor's bond or the amount named therein is not sufficient indemnity then such Board of Commissioners shall have the right to order the surveyor to execute a new bond in such amount as the Board may require and to its acceptance and approval.

#### **SURVEYOR—DEPUTIES.**

(Acts 1 R. S. 1852, p. 469, Sec. 9514.)

**487. When deputies may be appointed.** The county surveyor has the authority to appoint deputies. Whenever his services are required in a case where he is interested, the Board shall appoint a deputy to act.

(Acts 1911, p. 185, Sec. 9511.)

**488. To have charge of all surveying and engineering work of county—Competency.** By an amendment, to the original act of 1852, approved March 3, 1911, the Board is required to direct the county surveyor, if competent, to have charge of all surveying and civil engineering work of the county covering plans and specifications for bridges, turnpikes, roads, ditches, drains, levees and all other surveying and engineering work of the county.

Provisions in the act cover the determination of his competency.

(Acts 1907, p. 508, Sec. 6140.)

**489. Ex-officio drainage commissioner.** The county surveyor, under the Drainage Act of 1907, p. 508, is ex-officio one of the drainage commissioners of his county, and under the act is required to file a separate official bond.

The act of 1913, Sec. 9510a Burns R. S., requires a bond of not less than \$5,000, which bond supersedes the separate bond.

(Acts 1901, p. 526, Sec. 9528.)

**490. Counties of 150,000, what Board to furnish.** In counties of 150,000, the Board is required to furnish the surveyor with an easily accessible office and all necessary furnishings therefor; all ordinary office supplies, surveying stakes and other materials required in the execution of his work, on requisition provided for by law; all such

supplies to remain as property of the county. This act applies only to Marion county, at this date.

### TAXATION.

(Acts 1909, p. 156, Sec. 6088-6089.)

**491. Refund of erroneous county tax to taxpayer—State tax, how recovered.** In the event that any taxpayer has paid an erroneous tax in any amount for any year, or part of year, and shall appear before the Board and establish by proper proof that he was wrongfully assessed, it is the duty of the Board to order such part of the amount of such payment as belonged to the county to be refunded to such taxpayer.

It is the further duty of the Board to certify to the auditor of state the amount so proven as paid into the state treasury by the payment of such erroneous tax, when the auditor of state, shall audit, and the treasurer of state shall pay such claim out of any money not otherwise appropriated.

An appeal may be taken from the action of the Board, by the taxpayer, on its rejection of the claim.

(Acts 1 R. S. 1852, p. 224, Sec. 6083.)

**492. Board, when, may exempt payment of poll tax.** The Board may exempt from paying poll tax any person who, from any cause, it may deem unable to pay it.

### TELEPHONE COMPANIES.

(Acts 1903, p. 204, Sec. 5796.)

**493. Requirements as to placing of poles—Board's jurisdiction.** Under the act of 1903 granting privilege to telephone companies to erect and maintain their poles and wires upon and along the public highways, it is specially provided that nothing in the act shall be construed as depriving the Board of the power to require the relocation of any pole or appliances which may affect the proper use of any highway for public travel, for drainage, or for the concurrent use of other telephone lines, and that the location and setting of said poles shall be under the supervision of the Board.

(Acts 1911, p. 421, Sec. 7686.)

**494. Rights, privileges and prohibitions—Telephones and electric companies — Private telephone lines — Board's jurisdiction — Cutting trees.** Corporations now formed for the purpose of constructing, operating and maintaining telephone lines, telephone exchanges, or for the purpose of generating and distributing electricity for heat or power are authorized to set and maintain their poles, posts, wires and other appliances or fixtures on, along, under and across the public highways and waters, conditioned that no trees be cut along the highway without the consent of the property owners, and that no pole shall be located so as to interfere with the ingress to or egress from any premises, highway or waters. To private telephone lines are extended same rights and conditions.



The Board has complete jurisdiction, and can require the removal of any pole or appliance that interferes with the highway for public travel, for drainage or for concurrent use of other telephone lines, or lines conducting electricity.

The location and setting of the poles shall be under the supervision of the Board.

### **TOLL—BRIDGES.**

(Acts 1861, p. 97, Sec. 6070.)

**495. Board may purchase any and all interest in.** The Board, whenever it deems it proper and for the public good, may purchase any toll bridge, or buy any private interest therein, and order the same to be paid from the county treasury.

**Note:** This section should be construed in connection with the county council law.

(Acts 1905, p. 521, Sec. 7690.)

**496. Additional law relative to purchase of by Board.** Boards may purchase any toll bridge, or an interest therein, in the county; and when a franchise has expired or has been abandoned, or when the right to take toll has expired, it will be lawful for the Board to require the bridge, and the approaches thereto, to be repaired; the Board having the same powers that are given by law for building and repairing bridges.

(Acts 1911, p. 49, Sec. 7753n.)

**497. When and how Board may purchase.** A new law was enacted by the legislature of 1911, which provides for the purchase of toll roads. The matter comes before the Board by a petition signed by a majority of the legal voters of the townships where the toll road is located.

The act provides for an appraisal of the property by an engineer, a disinterested freeholder appointed by the Board together with a disinterested freeholder selected by the toll road company.

For any application of the law, reference should be had to the act.

(Acts 1913, p. 647, Sec. 7753f.)

**498. 1913 Amendment relative to purchase.** An amendment to the 1911 act, arranges for an annual tax levy to pay off bonds and interest, and provides that the Board, when it is its judgment, the public interest will be subserved, may purchase such toll road when such purchase by the township would put it beyond the constitutional debt limit.

### **TOWNS.**

(Acts 1905, p. 219, Sec. 8975.)

**499. How may be incorporated.** Persons intending to make application to the Board for the incorporation of a town, shall cause an accurate survey and a map of the proposed town to be made. Such survey is required to be made by a practical surveyor, and shall show the courses and distances of the boundaries, thereof; the quantity of

land, and its accuracy to be verified by the affidavit of the surveyor endorsed thereon.

(Acts 1913, p. 260, Sec. 8976.)

**500. Requirement as to a census.** Accompanying the application shall also be a census, to be verified by affidavit, taken thirty days prior to such application, exhibiting the name of the head of every resident family, and the number of persons belonging thereto, and the name of each resident owner of real estate.

(Acts 1905, p. 219, Sec. 8977.)

**501. Requirement as to newspaper publication.** Such survey, map and census, when completed and verified, shall be left at some convenient place within the territory of the proposed incorporation, for the inspection of interested parties, for a period of twenty days prior to presentation to the Board.

Notice of the intention to present such application and of the place where left for examination shall be given by not less than twenty days publication in some newspaper, if any there be, published within the territory, else by posting in three public places.

(Acts 1913, p. 260, Sec. 8978.)

**502. 1913 Amendment relative to incorporation.** The application for incorporation shall be by a petition signed by residents of such territory, subscribed by at least one-third of the whole number of qualified voters, as shown by said census; also by one-third of the whole number of resident owners of real estate as shown by the exhibit in such census. The petition shall set forth the boundaries, quality of land, with names of resident real estate owners therein, all verified by one or more of the petitioners.

Petition, accompanied with the required documents, shall be filed with the auditor, on or before the fixed time, who shall present it to the Board for its prompt action.

(Acts 1905, p. 219, Sec. 8979.)

**503. When Board shall order an election for incorporation.** The Board in hearing such application shall require proof that the survey, map and census were subject to the public examination for the time required and that the notice of same was duly given. The Board being satisfied that the legal requirements have been complied with shall make an order declaring that such territory, with the assent of the qualified voters, shall be an incorporated town, provided that the name thereof shall differ from that of every other town in the state.

The Board shall include in its order, a fixed date within thirty days for the qualified voters to meet at some convenient place therein, and determine the question of incorporation of such town.

(Acts 1905, p. 219, Sec. 8980.)

**504. Auditor's duties.** In pursuance to the order of the Board, the auditor is required to give a ten-day newspaper notice of such election,

and the further notice by posting in ten public places within the prescribed territory, at least ten days prior to the election.

(Acts 1913, p. 261, Sec. 8983.)

**505a. Action when election is favorable.** The election being had, by ballots "yes" and "no", the inspectors shall make return to the county auditor, to be laid before the Board at its next regular or adjourned session.

The Board being satisfied that the election is legal and that a majority of ballots are in favor of incorporation, it shall make an order declaring that the town has been incorporated by the name adopted.

In the event it is found that a majority of the votes oppose the incorporation, the Board shall so declare, when it shall not be lawful for the Board to order another election until after the expiration of two years.

**505b. An appeal can be made—Election expenses.** An appeal to the circuit court may be taken from the action of the Board in declaring or refusing to declare its incorporation. In such case an appeal bond for the use and benefit of the Board is required.

The expenses of the election follow the final action of the Board, to be paid by the petitioners if lost, or by the incorporated town when won.

(Acts 1909, p. 449, Sec. 8899a.)

**506a. Procedure in annexation of contiguous territory.** When any town shall desire to annex contiguous unplatted territory, the trustees of such town shall present their verified petition, accompanied with map or plat with accurate descriptions, by metes and bounds, of the property sought to be attached. Publication in newspaper, if any in the town, of such intention, for thirty days, else by posting in five public places, and copies of notice served on owners, if known, and residents of the county, is required.

(Acts 1909, p. 449.)

**506b. Action of Board as to annexation of contiguous territory.** The Board upon reception of the trustee's petition shall give it consideration, hearing the offered testimony for and against such annexation, and after an inspection of the map, and testimony heard, and the Board finding that the prayer of the petition should be granted, shall cause an entry on its record, to such effect. Such entry shall be conclusive evidence of such annexation.

## TOWNSHIPS.

(Acts 1859, p. 220, Sec. 9559.)

**507a. Duties of Board in laying off—Change of boundaries.** The Board may lay off and divide the county into any number of townships that the convenience of the citizens may require, accurately defining the boundaries thereof, and may, from time to time, make such alterations in the number, names and boundaries as they may deem proper.

**Note:** See Sec. 450, this book.

(Acts 1859, p. 220, Sec. 9560.)

**507b. Boundaries required to be recorded.** The descriptions of the boundaries of such townships shall be entered at full length in the records of the Board, as also all alterations in such boundaries and all new and additional townships which may be formed.

(Acts 1913, p. 651, Sec. 10254.)

**508. Townships of 50,000—Board to furnish room.** In all civil townships having a population of more than 50,000 as shown by the last preceding U. S. census, the Board is required to furnish all necessary room or rooms for assessors in such townships.

**508a. TRANSFER OF PROPERTY BY CIVIL TOWNSHIPS.**

(Acts 1915, p. 135.)

Any building or other property belonging to any civil township in this state may be conveyed to the corresponding school township in the manner prescribed in this act. In order to effect the transfer or conveyance of any building or other property from any civil township to the corresponding school township, a petition may be filed with the Board of Commissioners of the county in which such civil township is situated, asking for the conveyance or transfer of such building, or other property to be conveyed or transferred, and the reasons for desiring to effect such conveyance or transfer. The petition shall be signed by a majority of the legal voters resident within such civil township and shall be filed in the office of the county auditor. At the time of filing such petition the petitioners shall give a bond with good and sufficient freehold sureties, payable to the state, to be approved by the Board of Commissioners, conditioned to pay all expenses in the event the Board of Commissioners shall fail to authorize the proposed conveyance or transfer. Immediately after such petition shall have been filed the county auditor shall give notice of the filing of such petition by causing publication; to be made once a week for two (2) consecutive weeks in one newspaper printed and published in the county and of general circulation in the county in which such civil township is situated. The Board of Commissioners shall hear the petition at their next regular term, and on the day designated in the notice and shall determine all matters pertaining thereto, and if such Board shall be satisfied as to the propriety of granting the prayer of the petitioners, they shall so find and thereupon the trustee of such civil township shall convey such building or other property belonging to such civil township to such corresponding school township and such school township shall thereafter hold, control and manage such building or other property. All expenses incurred in the conveyance of such property, if such conveyance be authorized, shall be paid out of the general funds of such civil township.

**TOWNSHIP TRUSTEE.**

(Acts 1859, p. 220, Sec. 9566.)

**509. Ex-officio duties of.** The township trustee is, by virtue of his office, inspector of elections, overseer of the poor, and fence-viewer in and for his township.



(Acts 1859, p. 220, Sec. 9569.)

**510. Vacancy in office when filled by Board—When by auditor.** All vacancies in the office of township trustee shall be filled by the Board in term time, or by the county auditor in vacation; and every trustee thus appointed shall serve until his successor is elected and qualified.

(Acts 1859, p. 220, Sec. 9582.)

**511. Trustee without power to change or vacate highways.** The township trustee has no power to change, vacate or open any highway. This power is solely vested in the Board.

**Note:** See note, Sec. 331, this book.

### **TREASURER—COUNTY.**

(Acts 1865, p. 62, Sec. 9474.)

**512. Bond required, to acceptance of Board—Signed by him and sureties in presence of Board.** The county treasurer is required to file his official bond to the acceptance of the Board, in a penalty not less than double the amount of money which may come into his hands at any time during his term, by virtue of his office, with at least four freehold sureties. The bond shall be signed and acknowledged by said treasurer and his sureties in the presence of the Board or a majority thereof.

**Note:** Surety companies may execute such bonds. Secs. 5728 and 5758 Burns R. S.

(Acts 1853, p. 136, Sec. 9482.)

**513. Must keep office in fire proof building—Board's duty.** The county treasurer shall keep his office in a fire-proof building, where the same has been provided by the Board.

(Section 9483.)

**514. Penalty for keeping books and papers in other than fire-proof building.** If county treasurer neglects to keep his office, or the books and papers in any other than such fire-proof office, after completion of same, by the Board, upon conviction he shall be fined not to exceed \$100.

(Acts 1 R. S. 1852, p. 499, Sec. 9488.)

**515. When Board may remove from office—Suit for delinquency.** Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed from his office by the Board.

(Acts 1 R. S. 1852, p. 499, Sec. 9489.)

**516. Duty to make June settlement (See note, below).** The treasurer shall annually make complete settlements with the Board at the regular June term thereof.

**Note:** No doubt, the better practice is to follow the provisions of the later act of 1899, Sec. 5948 Burns R. S., which requires the annual settlement to be made at the January session of the Board. Sec. 470, this book.

(Acts 1911, p. 484, Sec. 10320a-b.)

**517. Temporary office in towns of 900—Other than county seat.** In counties which contain towns or cities, other than county seats, having a population of more than 900 inhabitants by the last federal census, the Board may authorize its county treasurer to open a temporary office for the collection of state and county taxes in each of such towns or cities. Sec. 2 of the act limits the additional compensation to the treasurer to \$300, to be fixed by the Board.

(Acts 1899, p. 343, Sec. 5947.)

**518. 1913 law requiring monthly reports of receipts and disbursements.** The treasurer shall keep an account of all money received by him for taxes collected pursuant to the rate fixed by the council, as required in this act, and as required by law, and on the first day of each month shall certify to the auditor the gross amount collected by him for the preceding month and the portion of said amount so collected that is county funds shall be available for the use of the county, and may be drawn upon for the purpose of paying any item of appropriation for such year or any part thereof.

**Note:** The act of 1913, at page 631, reads: "Such county treasurer shall, at the close of each month, report the total amount of cash payments received by him during the month and the respective accounts on which the same was paid, to the county auditor, who shall preserve such report." See Sec. 10352 Burns R. S.

### TRESPASS.

(Acts 1905, p. 584, Sec. 2308.)

**519. Penalty for trespass on county property.** Whoever cuts down, destroys by girdling or otherwise injures any standing tree, growing vine, bush, shrub or sapling on the land of any other person, or of any county, without license so to do from competent authority, is guilty of trespass, and on conviction shall be fined five times the value of the property, to which may be added imprisonment, not exceeding twelve months in jail.

### TUNNELS.

(Acts 1911, p. 624, Sec. 7692a-b-c.)

**520. When Board may construct tunnel instead of a bridge.** When it is deemed necessary by the Board to bridge any highway or public street across any navigable water, the Board may, if it deems best, construct a tunnel at such place underneath such navigable water, in lieu of a bridge.

Its construction shall be done under the laws governing the construction of bridges by Boards of Commissioners.

### UNEXPENDED FUNDS, REVERSION.

(Acts 1899, p. 343, Sec. 5941.)

**521. Reversion of, to general fund at end of calendar year—Exception as to pending suits.** When any item of appropriation shall remain

unexpended at the end of the calendar year for which the same was appropriated the amount thereof shall immediately revert to the general fund of the county, and no warrant shall be drawn on such appropriation after the end of such year: Provided, That in any and all cases where any appropriation is not used and expended during such year because of any suit that may be instituted to restrain or enjoin the expenditure of any money so appropriated (then such appropriation) shall not revert to the general fund of the county until one year after the termination of such suit, if such suit shall terminate against the party or parties instituting the same.

#### VACANCY IN OFFICE.

(Acts 1 R. S. 1852, p. 512, Sec. 9153.)

**522. How to be filled by the Board.** The Board shall fill all vacancies in county or township offices, except such vacancies as are otherwise provided for; such appointment to expire when a successor is elected and qualified, and who shall be elected at the next general or township election.

#### VOLUNTARY SERVICES.

(Acts 1899, p. 343, Sec. 5950.)

**523. Board prohibited from making allowances for—Other prohibitions.** A Board has no power, whatever, to make an allowance out of the county treasury for a voluntary service or for things voluntarily furnished. Neither has the Board the power to pay money out of the treasury for the relief or support of any pauper or poor person if such party is not an inmate of some county institution.

The Board has no power to contract for the service of any physician for attendance on the poor other than inmates of county institutions. The Board cannot pay per diem, or other compensation to a justice of the peace, for making returns to the auditor; or pay for dockets or other supplies for such officials.

**Note:** The old statute, giving mileage to the justice for making return of fines, was recopied in the justice fees section in 1913. See Sec. 1865 Burns R. S., Sec. 708, "Fees and Salaries", 1913.

#### WARRANTS.

(Acts 1879, p. 30, Sec. 6097.)

**524. Funds to pay, otherwise can not be issued—Penalty to auditor and treasurer for violation.** No warrant or order shall be drawn on the treasurer if at the time there is no money in the treasury; and to that end, it shall be the duty of the treasurer to notify the auditor and the Board of such condition. Failure to do this on the part of the treasurer makes him liable, on his official bond to the amount of any orders issued, together, with the interest on them.

If any auditor knowingly issues a warrant on the treasurer when the treasury is without money the same liability and penalty obtains to him.

**WEIGHTS AND MEASURES.**

(Acts 1911, p. 635, Sec. 10525c.)

**525. When Board "shall" and "may" appoint sealer—Duties of sealer.** By an act of 1911, the Board of any county might, at its discretion, appoint a sealer of weights and measures. This statute by the act of 1913, at page 423, was amended to read that the Boards of counties with 50,000 or more population, "shall", and Boards of counties of less than 50,000 population "may", appoint a county inspector of weights and measures who shall serve during the pleasure of such Board, his compensation to be determined by the Board. A bond for the faithful performance of duties shall be given by such inspector to the approval of the appointing power.

The statute provides, however, that in counties of 50,000 or more population, it is not obligatory upon the Board to appoint an inspector, provided such county contains a city or cities of the first, second, third or fourth class, in which an inspector has been appointed. In case the Board does appoint an inspector in such county, the county inspector shall have jurisdiction of the county outside of such city or cities, and the city inspectors shall have jurisdiction of their respective cities.

In counties where inspectors are appointed the Boards are required to provide the necessary apparatus and supplies for the office, and councils are required to appropriate the necessary money therefor.

Such county inspector is required to make an annual report to the Board not later than December 1st, of all work done by him for the year.

**WORK HOUSE.**

(Acts 1905, p. 383, Sec. 8886.)

**526. When county jail may be used as such.** Under the act of 1905, p. 383, any town or city shall have power to erect a prison or work house within its corporate limits and to imprison therein malefactors of municipal or state laws.

Until such town or city has erected such prison or work house, in all cases the county jail or work house may be used for such purposes.

The courts hold that a city, and not the county, is liable for the expense of keeping prisoners of the city in a county jail.

(Acts 1879, S. p. 247, Sec. 10025.)

**527a. Board may use property or purchase.** The Board has the power, at its discretion, and when deemed advisable, to use property then owned, or may provide a tract of land, for the county, and thereon establish and maintain a work house—the expense to be paid out of the general fund of the county.

(Acts 1879, S. p. 247, Sec. 10026.)

**527b. When established, Board to appoint superintendent.** When such work house has been established by the Board, it shall employ some proper person to be called the "superintendent of the county work house," to take charge of same, under such rules and restrictions as from time to time may be adopted by the Board.



It is provided that in case the work house is established on the county farm, the superintendent of the county asylum may be required to take charge and control of the work house.

(Acts 1879, S. p. 247, Sec. 10027.)

**527c. Who may be transferred to.** When such work house is ready for occupancy, the Board shall give notice, by an order made of record, to any court, judge, mayor, magistrate, justice of the peace, or other officer, of such fact, who may sentence any one to the county work house instead of the county jail.

(Acts 1879, S. p. 247, Sec. 10028.)

**527d. Transfers to work house—Penalties.** Whenever any person shall have been sentenced to imprisonment in the county jail, during any time of his imprisonment he may be transferred to the county work house, under such orders, rules and regulations adopted, from time to time, by the Board.

The sheriff, jailer or custodian of such prisoner shall obey such orders, rules and regulations, and his neglect or refusal is punishable by a fine of not over \$50, to which may be added imprisonment in the work house for sixty days.

(Acts 1879, S. p. 247, Sec. 10029.)

**527e. Work which may be required of prisoner.** All prisoners, and others held in the work house, as far as is consistent with age, sex and ability, shall be kept at hard labor, in such manner, as deemed by the Board most advantageous to the county. This labor may be performed in or about the work house, upon any public wharf, street, alley, highway or thoroughfare within the county, or upon any other work or public improvement deemed by the Board for the welfare of the county.

Such work shall be done under direction of the superintendent, and for such purposes the Board may meet at any time and make proper orders, which shall be made a matter of record.

(Acts 1879, S. p. 247, Sec. 10030.)

**527f. Board may contract labor of prisoner to city.** Boards are authorized to make contract and agreements, with any town or city in such county, for committing to such work house, persons sentenced to pay or replevin any fine, forfeiture and costs, under any ordinance or law of such town or city, such prisoners, at all times, to be subject to the rules and regulations adopted for the conduct and management of the work house.

(Acts 1879, S. p. 247, Sec. 10031.)

**527g. Duty of superintendent—Quarterly reports—Auditor's duty.** The superintendent of the work house is required to quarterly make and file a detailed report, in writing, to the Board, showing the total receipts and expenses for the preceding quarter. All receipts of the superintendent shall be paid to the county treasurer on account of the general county fund, and all expenses paid out on the order

of the Board. A separate account shall be kept by the auditor and treasurer to be known as the "county work house account."

(Acts 1879, S. p. 247, Sec. 10032.)

**527h. Grand jury's investigation and report—Board's duties as to report.** The grand jury shall make a personal inspection of such work house, during the time of its sitting, being given full powers to make a complete investigation of its condition and affairs, and shall file a duplicate of such report with the Board.

The Board shall consider all its complaints and recommendations, and obey the same, else place on record its reasons for not complying.

(Acts 1909, p. 397, Sec. 9812a.)

**527i. In re state board of charities.** The jurisdiction which is given to the state board of charities in the matter of management and supervision of county jails, under act of 1909, p. 397, does not make any mention of the county work house.

(Acts 1879, S. p. 247, Sec. 10033.)

**527j. Right of Board to visit.** The members of the Board, and any officer having the right to commit prisoners to the work house, may visit the same at any time for the purpose of determining whether or not the rules and regulations for its management and prisoners are enforced.

(Acts 1879, S. p. 247, Sec. 10034.)

**527k. Superintendent's bond—Enforcement of discipline—County physician's duty.** The superintendent shall give bond for the faithful performance of his duties, to the approval of the Board.

The county physician shall visit the county work house when required by the superintendent.

The superintendent, and his deputies, in charge of the prisoners, shall have the right to enforce discipline and the obedience of all orders, rules and regulations made for their government.

(Acts 1879, S. p. 247, Sec. 10035.)

**527l. Board may contract with city, in writing for county's able-bodied prisoners.** In case there is a city or town in the county that maintains a work house, it shall be lawful for the Board to provide, by written contract, for the custody and maintenance of any or all able-bodied persons sentenced to confinement in the county jail, and to provide for their removal and confinement in the work house.

#### HIGHWAY CROSSINGS—SEPARATION OF GRADES.

(Acts 1915, p. 148, amending Sec. 5556d.)

**528. Highway Crossings—Separation of grades.** The grade crossings act of 1913 gives the public service commission general supervision over the crossings of highways and railroads. Section 4 of the act, as amended in 1915, empowers the commission to order the separation of the grades of any such crossings except crossings in cities of more than 20,000 population, upon a hearing after notice to the steam

or interurban railroad and to the Board of the county in which such crossing is located. The county is required to pay one-fourth of the cost of separating the grade, and the railroad three-fourths of the cost thereof when the work is ordered done.

### CONTAGIOUS DISEASES AMONG DOMESTIC ANIMALS.

(Acts 1915, p. 566.)

**529. County Commissioners—Appoint County Veterinarian.** The Board of County Commissioners of each county may at their option annually appoint for a designated period a county veterinarian whose duty it shall be to assist the state veterinarian in the suppression and extirpation of foot and mouth disease, glanders and other communicable and contagious diseases, except hog cholera, and in preventing the spread of such diseases, and in case a vacancy should occur from any cause said county commissioners shall immediately fill the vacancy. Said county veterinarian shall be a graduate of a veterinary college whose graduates are eligible for the position of veterinary inspector and quarantine officer in the United States department of agriculture and licensed to practice veterinary medicine in the county where he resides. Said county veterinarian shall report all outbreaks of such diseases to the state veterinarian, and when requested by the state veterinarian shall investigate any outbreaks of such disease that may occur within the county where he received the appointment of county veterinarian, and quarantine and disinfect, under the direction of the state veterinarian, the premises on which any outbreaks of such disease may occur. The salary of said county veterinarians shall be five dollars (\$5.00) for each day actually engaged in the investigation, suppression and control of outbreaks of such diseases and all necessary expenses incurred in the performance of such duties, and for the purpose of paying the salary of said county veterinarian and defraying the expenses that he may incur in the performance of his duties, said county veterinarian is hereby authorized to file monthly with the county auditor a sworn statement of the number of days engaged in the investigation, suppression and control of outbreaks of such diseases, and receipted bills for such necessary expenses including traveling expenses and hotel bills incurred in the performance of such duties, and the county auditor shall after such claims have been filed and approved by the county commissioners draw a warrant or warrants on the county treasurer who shall pay same. If at any time the county veterinarian does not efficiently, honestly and faithfully perform his duties he shall be removed from office on the recommendation of the state veterinarian, by the Board of County Commissioners. And it shall be the duty of sheriffs, constables, prosecuting attorneys and their deputies within their respective jurisdictions to assist the state veterinarian and the county veterinarians in the enforcement of the rules and regulations established by said state veterinarian and in the prosecution of any violation thereof: Provided, That the Board of County Commissioners shall not appoint a county veterinarian until the county council of such county has made an appropriation at any regular or called meeting sufficient to pay the salary and expenses of such veterinarian.

**LEGISLATIVE APPORTIONMENT, 1915.**

(Acts 1915, p. 656.)

**530. Counties divided into districts.** Every county having three (3) or more full representatives under the provisions of this act shall be divided into representative districts equal to the number of representatives to be elected from such county. The Boards of County Commissioners of such counties shall on or before June 1, 1915, divide their respective counties into representative districts, giving to each district as nearly as may be, an equal number of electors. The territory included in any district shall be contiguous. For the purpose of determining the number of electors, the Boards shall cause an enumeration of electors in their counties or they may use the enumeration made by the township trustees if the same shall be adequate to determine the number of electors for each district. If the Board of County Commissioners of any county shall fail or refuse to divide such county, on or before June 1, 1915, into representative districts, the representatives from such county shall be elected by the whole county. Any county divided into representative districts under the provisions of this act, shall not be changed during the time this act shall be in force. The Boards of County Commissioners are authorized to incur any expenditures in connection with the taking of the enumeration of electors which shall be paid without an appropriation by the county council.

**Note:** The above act applies only to the counties of Vanderburgh (3), Marion (10), Vigo (3), Allen (3), St. Joseph (3), and Lake (4).

**TOLEDO-CHICAGO WATERWAY.**

(Acts 1915, p. 301.)

**531. Commissioners convey right of way.** The Toledo-Chicago waterway act of 1915 provides that whenever the federal government shall have located such water-way across any county, as evidenced by the filing of a map thereof, in the auditor's office of said county, containing a description of the lands necessary for the purpose of the water-way, and in addition thereto, it shall be shown to the Board that the federal congress has appropriated money for the construction of such water-way, it shall be the duty of the Board of such county to pass a resolution declaring the property described in such map to be necessary for the use and purposes of such water-way and that the same be appropriated for such use and purpose.

The Board shall then forthwith proceed to acquire title to such property, by donation, purchase or condemnation.

The Board is given the same power of condemnation for that purpose as the Board now has to acquire real estate for county purposes.

The county council of such county is required to make the necessary appropriation to acquire such land, and to levy taxes upon all taxable property of the county to pay therefor.

When such land shall be acquired by the county, the Board shall execute conveyance thereof to the U. S. A.



**DITCHES AND DRAINS—REPAIRS—"COUNTY" ACT.**

(Acts 1915, p. 417.)

**532a. Drainage—Maintenance—Supervision of County Commissioners.** The cleaning, repair, betterment, improvement and general superintendence of all ditches and drains contemplated in this act, shall, except as hereinafter otherwise provided, be under the exclusive charge and supervision of the Board of Commissioners of the county in which such ditches or drains or any part or parts thereof are located. Under the conditions prescribed in this act, such Board of Commissioners shall be authorized and required to perform the following duties:

1. To see that all such ditches and drains are cleaned out and kept open and in proper repair and free from obstruction, in conformity with the original specifications thereof, and in such manner that they may fully and completely discharge the functions for which they were designed and intended.

2. To authorize the improvement or betterment of any such ditch or drain in excess of the original specifications.

3. To authorize the levy of assessments for the creation of an emergency fund to effect repairs progressively in any ditch or drain as the necessity may arise.

4. To have and exercise general superintendence over such ditches or drains when the work of cleaning, repairing, improving or bettering shall have been completed and accepted, and to authorize and supervise the levy and expenditure of such assessments as may be needful to keep such ditches or drains in a reasonable state of preservation and repair.

5. To appoint resident agents or overseers from among the landowners assessed for repairs or betterments of any ditch or drain who, subject to the direction of the Board of Commissioners, shall have immediate oversight of such ditches or drains.

**532b. Filing of petition.** Whenever the requisite number of resident owners of lands and other property or the resident owners of the requisite area in acreage of the lands and other property originally assessed for the construction of any ditch or drain contemplated in this act shall desire to provide for the cleaning, repair and maintenance or the betterment and maintenance of such ditch or drain, they may, in conformity with the provisions of this act, file a verified petition with the Board of Commissioners of the county in which such ditch or drain is located; or if such ditch or drain be located in two or more counties, then with the Board of Commissioners of the county in which are situated more lands and other property originally assessed for the construction of such ditch or drain than in any other county, asking that such ditch or drain be repaired and cleaned out in such manner that it will conform to the original specifications thereof, and be thereafter maintained, or that certain specified improvements and betterments be authorized and that when such improvements and betterments are perfected and consummated, that such ditch or drain be thereafter maintained, or that an emergency fund be created by the levy of special assessments on the lands and other property originally assessed for the

construction of such ditch or drain, or found on subsequent inspection to be affected, and that thereafter repairs and improvement be made progressively from time to time as the necessity may arise, as provided in this act. The petition shall be filed in the office of the auditor of such county: Provided, That in all cases where it is desired to clean, repair, improve or better a dredge ditch the landowners affected shall have the right to elect, whether the petition be filed with the Board of Commissioners or with the circuit or superior court, and if the petition is filed with the circuit or superior court, the clerk of such court shall exercise all duties by this act conferred upon the county auditor and in other respects the procedure shall be as prescribed in this act.

**532c. Contents of petition.** The petition asking that any ditch or drain be cleaned out and repaired in such manner as to conform to its original specifications, or that certain specified improvements and betterments be authorized in excess of the original specifications, shall state:

1. The name, general location, route, length and approximate dimension or capacity of such ditch or drain, and whether it is a tile or open drain, and if an open drain whether originally constructed by means of a dredge machine or otherwise.

2. The date on which the original construction work, or in case such ditch or drain shall have been newly constructed or reconstructed, the date on which the last preceding construction work, on such ditch or drain, was completed, approved and accepted, and the nature and purpose of any such construction work.

3. If such ditch or drain has ever been cleaned out or repaired or if any improvements or betterments have ever been made or effected thereon or thereto, the date on which the work of cleaning and repairing or making or effecting such improvements and betterments the time last preceding was completed, approved and accepted, and the general nature and extent of any such improvements and betterments.

4. The names of the owners of the lands and other property which were originally assessed for the construction of such ditch or drain, together with a description of the lands and other property owned by each, if known, and if the name or names of any owner or owners of any lands or other property originally assessed for the construction of the ditch is unknown and cannot be ascertained upon diligent inquiry that fact shall be stated in the petition. It shall be sufficient to describe such lands or other property as belonging to the person or persons who appears to be the owner by the last tax duplicate or record of transfers kept by the auditor of the county in which such lands or other property are situated.

5. That if the ditch or drain, to be cleaned out and repaired in such manner as to conform to its original specifications, or if the improvements and betterments contemplated and specified in the petition are made or effected, such ditch or drain will be fully adequate to successfully and satisfactorily drain and reclaim the lands and other property originally assessed for its construction.

6. That the costs, damages and expenses of the proposed work of cleaning and repairing or of improving and bettering such ditch or

drain will be less than the benefits which will result to the owners of the lands likely to be affected thereby.

7. The approximate aggregate cost of cleaning and repairing or of improving and bettering such ditch or drain.

8. A general statement of the manner in which such cleaning and repair work, and a detailed statement of the nature, character and extent of such improvements and betterments, and in either case a statement as to the method by which it is believed such work can be accomplished in the cheapest and best manner; and in case of cleaning and repair work, whether it is proposed to do the work by means of a dredge machine or otherwise.

9. The petition shall further contain a statement to the effect that the owners of lands and other property originally assessed for the construction of such ditch or drain and whose names are subscribed to such petition are willing to and do obligate themselves to pay the tax or taxes which may be assessed against their respective lands or other property to pay the expenses of cleaning out such ditch or drain or making the repairs which may be necessary to restore such ditch or drain to its original condition and make it conform to the original specifications, or of making and effecting such improvements and betterments as are specified and prayed for in the petition.

10. The petition shall likewise state whether or not the petitioners desire to provide for the creation and progressive replenishment of an emergency fund to be used in making temporary and provisional repairs on such ditch or drain after it shall have been cleaned, repaired, improved or bettered, and to insure the perpetual maintenance of such ditch or drain under the general superintendence of the Board of Commissioners, as provided in this act.

If the petition asks for the cleaning and repair of any ditch or drain, it shall, in addition to the foregoing, make the following statements:

1. That by reason of the accumulation of earth, sand, gravel, debris and other material therein, and the presence therein and encroachment thereon of natural growths, such ditch or drain no longer adequately performs the functions for which it was designed and intended.

2. That the public health is needlessly imperiled by circumstances induced and directly traceable to the condition of such ditch or drain.

3. That the safety and preservation of one or more highways of the county or counties or one or more streets of or within the corporate limits of a city or town will be secured by cleaning out and repairing such ditch or drain.

If the petition asks for the improvement or betterment of any ditch or drain, it shall in addition to the foregoing, make the following statements:

1. That the ditch or drain as originally constructed does not successfully and satisfactorily discharge the functions for which it was designed and intended and that in order to secure adequate drainage and protection of the lands and other property assessed for its construction it will be necessary to enlarge, deepen, widen, straighten or



extend such ditch or drain; or that in order to preserve works already constructed it will be necessary to build, install, enlarge or repair sand-traps, fences, revetments, flood-gates or any other timber, concrete, or metal or masonry work; or that the value of the agricultural lands, roads, streets and other property will be enhanced and the convenience of the owners thereof subserved by the tiling of an existing open drain; or by changing an existing tile drain into an open drain by removing the tile and making the necessary excavations; or by increasing the capacity of a tile drain by removing the old tile and installing larger tile or sewer pipe; or by installing additional or supplementary lines of tile; or any of the methods, hereinbefore enumerated, combined, which may seem necessary and practicable to facilitate [facilitate] the drainage of the lands and other property affected thereby.

**532d. Notice of filing by publication.** If the petition asks for the cleaning and repair of any ditch or drain and is signed by at least one-tenth ( $1/10$ ) but less than one-fourth ( $1/4$ ) of the resident owners of lands and other property, or by the resident owners of at least one-tenth ( $1/10$ ) but less than one-fourth ( $1/4$ ) of the area in acreage of the lands and other property originally assessed for the construction of the ditch or drain; or if the petition asks for the making of certain specified improvements and betterments, and is signed by a majority of the resident owners of the lands and other property, or by the resident owners of a major portion of the area in acreage of the lands and other property originally assessed for the construction of the ditch or drain, then the county auditor in whose office the petition has been filed, shall immediately give notice of the filing of the petition by causing publication to be made once a week for three (3) consecutive weeks in some newspaper printed and published and of general circulation in each county in which are situated lands and other property originally assessed for the construction of the ditch or drain, and the office, plant or establishment, of which newspaper is located nearest to the ditch or drain. The last insertion of the notice shall be made at least fifteen (15) days prior to the first day of the next regular session of the Board of Commissioners, at which the petition is to be heard and considered. The notice as published shall be in substantially the following form, and it shall be deemed sufficient for all purposes of this act:

Notice of petition to clean out and repair (or to better and improve) the ..... ditch, situated in ..... township (or townships), ..... county (or counties), Indiana.

Notice is hereby given to all persons whose lands or other property were originally assessed for the construction of the ..... ditch, situated in ..... township (or townships), ..... county (or counties), Indiana, that a petition was filed in this office on the ..... day of ..... 19..., signed by the requisite number of interested landowners (or by the interested owners of the requisite amount of land in acreage), as prescribed by section four (4) of an act of the general assembly entitled ....., approved ..... 1915, asking that the ..... ditch be cleaned out and repaired in such manner as to conform to its original specifica-



tions, (or be bettered and improved in the following manner [here specify the improvements or betterments]) and that the lands and other property originally assessed for the construction of the..... ditch will be affected by the contemplated repairs (or improvements or betterments) and rendered liable to taxation for the purpose of paying the costs and expenses of making such repairs and effecting such clean out which may be found necessary to restore such ditch to its original specifications (or the improvements or betterments, specified elsewhere in this notice), and you and each of you are hereby notified to appear at the next regular session of the Board of Commissioners, to be held on the ..... day of ....., 19..., at ....., in ..... county, and show cause, if any there be, why the ..... ditch should not be cleaned out and repaired as asked for in the petition (or why the improvements and betterments specified elsewhere in this notice should not be made).

.....  
County auditor of ..... county, Indiana.

The certificate of the auditor of the county, or the affidavit of any other creditable person, affixed to a copy of the notice, shall be sufficient evidence of the publication of the notice. It shall not invalidate such notice if no description of ditches or drains is given therein. The Board of Commissioners of any county shall have no authority to receive or consider any petition asking for the improvement or betterment of any ditch or drain unless signed as prescribed in this section; nor shall any such Board of Commissioners have any authority to receive or consider any petition asking for the cleaning or repair of any ditch or drain unless signed as prescribed in this section or in section eight (8) of this act.

**532e. Jurisdiction over lands.** When it appears to the Board of Commissioners that notice has been given of the filing of the petition by the publication of notices, as provided in section four (4) of this act, the Board of Commissioners shall order the same placed on the book in which all matters properly cognizable before the Board of Commissioners are recorded, as an action pending therein. The Board of Commissioners before whom the action is pending shall thereafter have and maintain exclusive jurisdiction over all lands and other property, without regard to county lines, originally assessed for the construction of such ditch or drain, with power to fix a lien on such lands and other property and for all other purposes of this act.

**532f. Time for hearing.** The Board of Commissioners with whom the petition shall have been filed shall hear the petition at the regular session of such Board of Commissioners and on the day designated in the notices, and shall determine all matters pertaining thereto, and all matters involved in any subsequent proceedings arising under this act, and may adjourn the hearing from time to time, or continue the case for want of sufficient notice, or other good cause. It shall be the duty of such Board of Commissioners to hear and determine whether or not the petition contains the signatures of the requisite number of the resident owners of lands and other property or the signatures of the resi-

dent owners of the requisite area in acreage of the lands and other property originally assessed for the construction of the ditch or drain, and the affidavit of any three (3) or more of the petitioners, that they have examined the petition, and are acquainted with the locality of the ditch or drain, and that the petition is signed by the requisite number of the resident owners of the lands and other property or by the resident owners of the requisite area in acreage of the lands and other property originally assessed for the construction of the ditch or drain, may be taken by the Board of Commissioners as prima facie evidence of the facts stated therein; or the oath or affirmation before such Board of Commissioners, or the affidavit of any person, properly taken and certified by any person or court authorized to administer oaths, in this state, shall be sufficient evidence to the Board of Commissioners of such facts. If it appears to the Board of Commissioners that the petition has not been signed as hereinbefore required, the proceedings shall be dismissed at the cost of the petitioners; but if it appears to the Board of Commissioners that the petition has been signed as hereinbefore required, the Board of Commissioners shall so find, and such finding shall be conclusive upon the owners of the lands and other property contemplated in the petition that they have assented to and accepted the provisions of this act. The petition may be amended as any other pleading. No petitioner shall have the right to withdraw from the petition, except by the consent of the majority of the other petitioners thereon, or when it shall be shown to the satisfaction of the Board of Commissioners that the signature of the petitioner was obtained by fraud or misrepresentation. All deeds made for the purpose of establishing or defeating the prayer of petition, not made in good faith and for a valuable consideration, shall be taken and held to be in fraud of the provisions of this act, and the holders thereof shall not be considered owners.

**532g. Filing of objections.** Any owner of lands or other property, originally assessed for the construction of such ditch or drain, who may not have signed the petition, and who desires to object to the proposed clean out and repair of such ditch or drain, or to the improvements and betterments contemplated and specified in the petition, may do so by filing his verified objection or objections in writing, stating why such ditch or drain should not be cleaned out and repaired, or why such improvements and betterments should not be made. All such objections shall be filed with the county auditor at least three (3) days before the day set for the hearing of such cause. Such objection or objections shall be limited to a denial of the statements set forth in the petition, except that any interested owner of lands or other property, exercising his right to object to the contemplated cleaning and repair of any such ditch or drain, may allege that the ditch or drain if repaired and cleaned out in such manner as to conform to its original specification will not be fully adequate to successfully and satisfactorily drain and reclaim the lands and other property originally assessed for its construction, and that the best interests of the owners of land and other property and the general public will not be conserved, and that it will be the policy of wisdom and economy to deny the prayer of the peti-

tioners, in order that, without incurring needless expense, steps may be taken to provide means for more adequate drainage than is afforded by the ditch or drain contemplated in the petition. All such objections shall be heard by the Board of Commissioners in a summary manner and without unnecessary delay.

1. In the event that any or all of such objections are sustained, the Board of Commissioners shall dismiss the proceedings and adjudge the costs against the petitioners in proportion to the number of acres of land or other property owned by each petitioner at the time of filing of the petition, and which lands, or other property were originally assessed for the construction of the ditch or drain.

2. In the event that all such objections are overruled, or if no objections are filed, the Board of Commissioners shall grant the prayer of the petitioners and order the repair and cleaning, or the betterment and improvement, as the case may be, of the ditch or drain, and shall immediately refer the matter to the county surveyor, and such surveyor shall thereupon proceed as hereinafter prescribed.

**532h. Mandatory powers.** If the petition asks for the cleaning and repair of any ditch or drain and is signed by at least one-fourth ( $1/4$ ) of the resident owners of the lands and other property, or by the resident owners of at least one-fourth ( $1/4$ ) of the area in acreage of the lands and other property originally assessed for the construction of the ditch or drain, the Board of Commissioners shall grant the prayer of the petitioners, as a matter of course, and refer the matter immediately to the county surveyor of the county in which the original proceedings for construction were had, and such surveyor shall proceed as hereinafter required.

**532i. Appointment of engineer.** In case the county surveyor shall not be a civil engineer or is incompetent, or is not entirely disinterested, the Board of Commissioners shall appoint a disinterested and competent engineer who shall make the necessary surveys and discharge all the duties which would otherwise have been discharged by the county surveyor. Such engineer so appointed shall, before entering upon the discharge of his duties, take and subscribe an oath which shall be deposited with and preserved by the county auditor, and he shall give a bond with adequate sureties, to be approved by the Board of Commissioners, conditioned that he will faithfully, honestly and impartially discharge his duties to the best of his skill and ability.

**532j. Estimates by surveyor.** As soon as practicable after any petition and the finding of the Board of Commissioners thereon shall have been referred to the county surveyor, it shall be the duty of such surveyor to proceed to view and examine such ditch or drain, and the lands and other property originally assessed for its construction, as well as any and all other lands and property not originally assessed for construction which may be affected by the proposed repairs or improvements. He shall make all necessary surveys, ascertain the grade line of such ditch or drain, or proposed ditch or drain, fix and establish grade stakes, divide the ditch or drain or the proposed ditch or drain into sections of not to exceed one hundred (100) feet in length, deter-



mine the number of cubic yards of earth in each section which it will be necessary to remove in order to restore such ditch or drain to its original condition and in conformity with the original specifications, or to make and perfect the necessary improvements and betterments. He shall also estimate the total cost of excavation and the average cost per cubic yard for the excavation of the whole or any part of such ditch or drain. If the whole or any part of such ditch or drain is tiled, such surveyor shall determine the character and cost of the work, including all necessary excavation, and the number, character and size of the tile necessary to restore such drain to its original condition or to consummate the necessary improvement or betterments. He shall also estimate the cost, character and extent of the work necessary to remove all trees and other natural growths found upon the banks of such ditch or drain or proposed ditch or drain or contiguous thereto; likewise the cost, character and location of all sand-traps, fences, revetments, flood-gates or other timber, concrete or masonry work, or any improvement, enlargement, relocation, replacement or discontinuance thereof. If the ditch or drain is to be cleaned and repaired, he shall ascertain from the bench marks and the original specifications on file, the original depth and width of the ditch or drain at each grade stake established. If the improvements or betterments contemplated include the enlargement, deepening, widening, straightening, extending or constructing of any ditch or drain, such surveyor shall so locate the line of such proposed drain or any extension thereof or tributaries or laterals thereto as in his judgment will be most convenient and advantageous, and he shall perform any and all other engineering work of any kind or character whatsoever which may be necessary to fully carry out the proposed work of cleaning, repairing, improving or bettering as specified in the petition and granted by the Board of Commissioners.

**532k. Assessments for benefits.** Unless otherwise modified by the Board of Commissioners at the hearing provided for in section fifteen (15) of this act and except as hereinafter otherwise provided, the benefits assessed to or the damages awarded any tract or parcel of land or other property for the repair and cleaning or the improvement and betterment of any ditch or drain, shall be based upon the awards of damages or assessments for benefits originally made for the construction of such ditch or drain and each tract or parcel of land or other property shall be assessed proportionately for repairs and cleaning, or improvements and betterments, and each proportionate share, as based on the original cost for construction, shall be computed by such surveyor from the original assessment roll of such ditch or drain. The surveyor shall make the computation of the proportionate shares of benefits and damages to be assessed against and awarded to each tract or parcel of land or other property, as herein provided, before making his view and inspection of the ditch or drain and such lands and other property drained thereby, and in making such view and inspection he shall determine and ascertain whether such proportionate shares are just and equitable, and shall report accordingly: Provided, That if any ditch or drain contemplated in this act shall have been newly constructed or reconstructed, the cost of such reconstruction shall be



taken as the basis in determining the proportionate assessments for benefits or damages in repairing or cleaning. If the proposed improvement or betterment of any ditch or drain contemplates the extension of such ditch or drain by digging new channels or constructing laterals or any other work which will result in conferring benefits or imposing damages on lands or other property not involved in the original proceedings for the construction of such ditch or drain, the surveyor shall assess to each such tract or parcel of land or other property including streets, highways, rights of way of railroads or other transportation companies, and the lands and easements of any and all corporations, whatsoever, its proportionate share of benefits and damages in the same manner as is now provided by law in the proceedings for the original construction of ditches and drains. The surveyor shall likewise determine and ascertain whether any lands or other property not mentioned in the petition and not originally assessed for the construction of such ditch or drain will be benefited by the proposed repairs or betterments, and also whether any lands and other property described in the petition and originally assessed for the construction of such ditch or drain will not be benefited by the proposed repairs and betterments, and report accordingly. The surveyor shall award to each tract or parcel of land through which any open ditch or drain passes reasonable damages, which, in his judgment, accrue to such lands by reason of the presence or existence therein or thereon of such open ditch or drain, and the benefits assessed to such tracts or parcels of land shall be abated accordingly. If the owner or owners of the lands appropriated for the right of way of any such open ditch or drain shall not have been originally compensated at the time of construction, for the lands embraced in such right of way, so appropriated, such owner or owners may be awarded an annual rental for the use and usufruct thereof, in lieu of damages hereinbefore provided. In view and inspecting any such ditch or drain, the surveyor shall take note of any accumulations of earth or debris or any other obstructions in the channel of such ditch or drain which are directly traceable to the negligence of any landowner. The surveyor shall notify such landowner of the presence of such accumulations or obstructions and give him an opportunity to remove them at his own cost, and upon failure or refusal to do so, the surveyor shall estimate the approximate cost of removing such obstructions and accumulations and assess the same as special benefits to such landowner and the special assessments so made shall be collected at the same time and in the same manner that assessments for cleaning and repairs are collected.

**5321. Main line drain.** Any open or tile drain which constitutes an outlet for a separate and distinct tributary drain or separate and distinct tributary drains, shall, for the purpose of this act, be known and designated as a main line drain. In assessing benefits for the cleaning and repair of any main line drain, the total benefits so assessed shall be divided and apportioned in the following manner:

1. Each tract or parcel of land or other property directly benefited by and originally assessed for the construction of any main line drain shall be assessed its proportionate share of benefits, as provided in sec-

tion eleven (11) of this act, which it would bear if no such tributary drain or tributary drains had been constructed or afforded an outlet therethrough.

2. Whatever additional revenue may be necessary to pay the expenses of cleaning out and repairing any such main line drain shall be raised by levying an assessment, at a uniform rate per acre, on each and every acre of land or other property originally assessed for the construction of any and all tributary drains which are afforded an outlet through such main line drain. The assessments imposed by the levy of a flat or uniform rate shall be deemed an annual rental charge for the use of the outlet afforded by the main line drain, and the benefits derived from the use of such outlet by the lands and other property assessed therefor.

**532m. Report of surveyor.** The surveyor shall prepare the necessary maps and profiles and shall embody all his estimates, calculations, recommendation and any and all other matters contemplated in section ten (10) of this act, in a report. He shall likewise prepare an assessment roll in which shall be set forth in proper form the amounts of benefits and damages and annual rentals assessed against and awarded to each tract or parcel of land of forty (40) acres or less according to the government surveys, and in Clark's grant and the French grant, and all preemptions of Indian reservations in such tracts as are owned by such persons or corporations as in his judgment will be affected by the cleaning and repair, or the improvement and betterment, of such ditch or drain. In the event that the petition asking for the cleaning and repair or the improvement and betterment of any ditch or drain shall have contained a request asking for the creation of an emergency fund, to be disbursed in the manner and for the purposes hereinafter provided, the surveyor shall ascertain the total amount of benefits assessed for the objects and purposes contemplated in the petition, and shall add thereto ten (10) per cent. of such amount for the creation of an emergency fund as hereinafter provided. The report and assessment roll shall be signed by the surveyor and shall be filed in the office of the county auditor.

**532n. Auditor—Notice of report.** Upon the filing of the report and assessment roll as prepared and certified by the county surveyor, the county auditor shall give notice thereof by causing publication to be made once a week for two (2) consecutive weeks in one newspaper printed and published and of general circulation in each county in which any of the lands or other property originally assessed for the construction of such ditch or drain are situated, and the office, plant or establishment of which newspaper shall be nearest to the line of such ditch or drain, the last insertion of such notice to be made at least ten (10) days prior to the first day of the next regular session of the Board of Commissioners having jurisdiction in the case. It shall not be necessary to name the persons interested, but it shall be sufficient to say:

Notice of filing of surveyor's report and assessment roll for repair (or improvement and betterment) of ..... ditch.

Notice is hereby given to all persons whose lands or other property were originally assessed for the construction of the ..... ditch

in ..... township (or townships), ..... county (or counties), Indiana, that the county surveyor of ..... county Indiana, to whom the petition for the repair (improvement and betterment) of the ..... ditch was referred by order of the Board of Commissioners of ..... county, Indiana, filed his report and assessment roll in this office on the ..... day of ..... 19..., and you and each of you are hereby notified that you may examine the report and the assessment roll and file exceptions to all or any part thereof, as provided by law.

.....  
County auditor of ..... county, Indiana.

Dated this ..... day of ..... 19...

The county surveyor shall likewise cause not less than three (3) similar notices, either written or printed to be posted in three (3) public and conspicuous places near the line of the ditch or drain in each township through which the line of the ditch or drain passes.

If any lands or other property which shall not have been assessed for the original construction or any subsequent reconstruction of such ditch or drain shall have been assessed by the county surveyor for repairs and cleaning or improvements and betterments, the petitioners shall deliver in person to each such landowner or landowners one copy of the notice as provided in this section and a statement certified by the county auditor disclosing the fact that such landowner has been assessed for benefits and showing the amount of his assessment; and if such owner or owners cannot be found, such notice and statement shall be left at his last and usual place of residence or it may be delivered to the tenant or agent of the land assessed, if any there be, of such owner or owners. All costs incurred in serving such personal notices shall be paid out of the funds raised for the repair and cleaning or the improvement and betterment of such ditch or drain.

**5320. Hearing of exceptions.** Any interested person may file exceptions to the surveyor's report or any part thereof, or to any assessment for either benefits, damages or annual rentals. Upon the day named in the notice the Board of Commissioners shall hear all exceptions and objections which may be made to the surveyor's report or to any part thereof, or to any assessment for either benefits, damages, or annual rentals, and shall determine all such objections speedily and in a summary manner so as to carry out liberally the purposes of this act. The Board of Commissioners may change, modify or supplement the surveyor's report or any part or item thereof; such Board of Commissioners may likewise modify and equalize the assessments as justice may require by diminishing the assessments on some tracts and increasing it on others, or by giving or withholding damages or annual rentals, and for such purposes all persons whose lands or other property are reported as affected, or are stated in the petition as affected, shall be deemed to be in court, by virtue of the notice originally given to such parties of the pendency of the petition, or by notices subsequently given to the owners of lands which were not in the petition but brought in by action of the county surveyor; and if lands are



described in the petition as affected by the proposed work and the county surveyor has reported such lands as neither benefited nor damaged, the Board of Commissioners may, if the facts and justice shall warrant it, make assessments against the same. If lands or other property are described in the surveyor's report as beneficially or injuriously affected by the proposed work which were not originally assessed for construction of such ditch or drain, the Board of Commissioners may, if the facts and justice shall warrant it, make or confirm assessments against the same, and as such assessments are so changed, modified and equalized, or made they shall stand and be adjudged valid. If the report is found to be defective and not according to law, the Board of Commissioners may direct the county surveyor to amend and perfect the report. The Board of Commissioners may adjourn the hearing from day to day, or from time to time, as they may deem necessary, until all objections are heard. All persons interested shall take notice of such adjournment without further notice. In the event that the petition asking for the cleaning and repair or the improvement and betterment of any ditch or drain shall have contained a request asking for the creation of an emergency fund, to be disbursed in the manner and for the purposes hereinafter provided, the Board of Commissioners shall add to the total amount of assessments for benefits, as changed, modified, equalized, confirmed or made, ten per cent. (10%) of such amount for the creation of an emergency fund, as hereinafter provided. When the order is entered confirming the assessments it shall be final and conclusive upon all parties interested, unless appealed from in ten (10) days thereafter. If an appeal is taken, all other persons interested shall take notice of such appeal. If the court to which an appeal is taken reduces the assessment one-fifth ( $1/5$ ) in amount, then all costs occasioned by such appeal shall be paid out of the general funds in the county treasury not otherwise appropriated, otherwise the costs shall be adjudged against the appellant. If more than one person appeal separately, the cases shall be consolidated and tried together. No appeal from any action of the Board of Commissioners had under this act shall be permitted to act as a supersedeas or to delay any action or the prosecution of any work begun under this act.

**532p. Letting of contract.** When the report and the assessment roll as prepared and submitted by the county surveyor and as changed, modified, supplemented, equalized and adjusted by the Board of Commissioners shall have been finally confirmed and adopted, the matter shall be immediately referred to the county surveyor who shall proceed forthwith to let the contract for the work of cleaning and repairing or improving and bettering such ditch or drain, under the direction and subject to the orders of the Board of Commissioners. Such county surveyor shall give notice of the letting of such contract by causing publication to be made once a week for two (2) consecutive weeks in some newspaper printed and published and of general circulation in each county in which are situated lands and other property assessed for the cleaning and repair or the improvement and betterment of such ditch or drain, and the office plant or establishment of which newspaper is located nearest to the ditch or drain. The last insertion of the



notice shall be made at least (10) days prior to the day on which such contract is to be awarded. If the work is to be done with a dredge machine, one insertion of such notice shall likewise be published in one reputable engineering journal. The notice as published shall be in substantially the following form and it shall be deemed sufficient for all purposes of this act:

Notice of letting contract for cleaning and repair (or improving and bettering) of ..... ditch in ..... township (or townships) ..... county (or counties), Indiana.

Notice is hereby given to all persons interested that the plans, specifications and computations for the work of cleaning and repairing (or improving and bettering) the ..... ditch, located in ..... township (or townships) ..... county (or counties), Indiana, are on file in this office where they may be examined and inspected, and that the contract for the cleaning and repair (or the improvement and betterment) of the aforesaid ditch will, in pursuance of the order of the Board of Commissioners of ..... county, be awarded at this office on the ..... day of ....., 19..., to the lowest and best responsible bidder.

.....  
County surveyor of ..... county, Indiana.

Dated this ..... day of ....., 19....

If the work of cleaning and repairing the ditch or drain is to be done with a dredge machine, a statement of the fact shall likewise be contained in the notice. The county surveyor shall furnish to any person interested or to any one proposing to bid on the work, the computation of the number of cubic yards of excavation in each station of the ditch or drain and such other facts as he may have at his disposal.

**532q. Bids on whole or part.** On the day and hour, and at the place designated in the notices, the county surveyor shall, under the direction, and subject to the orders of the Board of Commissioners, proceed to let such work by contract to the lowest and best responsible bidder. He may, subject to the preference hereinafter guaranteed to the interested owners of lands and other property, let the work of excavating as a whole or divide the same into two or more sections, and let the same in separate contracts, as will, in his best judgment, the most speedily and economically accomplish its completion. The contract or contracts for leveling down the excavations removed from the ditch or drain, constructing any timbers, metal, concrete or masonry work which may be required, removing trees or other natural growths found upon the banks of such ditch or drain or contiguous thereto, furnishing and hauling the tile which may be required, or performing any other necessary service or services, may be awarded in a single contract, or let separately, or so combined in two or more contracts as will most speedily and economically accomplish the work. Any person who shall have successfully bid for the whole or any part of such work, shall, when the same is so set off to him, enter into a contract with the county surveyor to perform such part of such work, and give bond and surety, in a proper and adequate penalty, to be approved by the Board of Com-

missioners, for the performance of his contract, in a workmanlike manner, and in the time specified in such contract, which, for good cause, such as inclement weather or other unavoidable contingencies, may be extended, by order of the Board of Commissioners, on recommendation of the surveyor, and that he will pay all damages occasioned by his nonfulfillment of his contract, which may be recovered in any court of competent jurisdiction. And in case any person or persons whose lands or other property are assessed for the repair and cleaning or betterment and improvement of such ditch or drain shall be damaged by reason of the default and failure of such contractor to complete the work within the time limited, or reasonable extensions thereof, and in the manner specified, such contractor so in default shall be liable on his bond to the person or persons so damaged, to the full amount of such damages, which may be recovered in any court of competent jurisdiction, in a suit or an action on such bond in the name of the State of Indiana, on the relation of the person or persons damaged, for the use of such person or persons injured or damaged, and the amount recovered shall be paid to the person or persons injured; and the county surveyor may bring suit in the name of the State of Indiana on his relation as such surveyor on such bond in any court of competent jurisdiction to recover any increased cost, expense or damages of or to the work by reason of the failure or default of such contractor, and the amount recovered shall be and become a part of the funds in the hands of the county surveyor for the prosecution of such work, the same as assessments. All earth or other material removed from any ditch or drain shall be leveled down in a manner to be prescribed by the county surveyor and approved by the Board of Commissioners, and, in all cases, in such manner as to suit the reasonable convenience of the several landowners interested. In awarding the contract or contracts for leveling down the earth or other material removed from any such ditch or drain, preference in all cases, shall be given to the landowner or landowners through whose land such ditch or drain passes.

**532r. Owners may bid.** Any person, against whose lands or other property assessments for repairs, improvements or betterments have been made, shall have the preference, at the same rate, over any other contractor, to the extent of his individual assessment, if such person so assessed for the repair, improvement or betterment of such ditch or drain shall be present at the time when such contracts for repairs, improvements or betterments are let, and shall demand a contract for such portion of such work as shall approximately equal his assessment, and if in the judgment of the county surveyor, he shall be fully competent to perform the work, and in the event that a portion or allotment of such work is contracted to any person or corporation interested in the repair, improvement or betterment of such ditch or drain, such county surveyor shall, whenever practicable, locate such share, portion or allotment of such ditch upon such tract of land owned by such person, or upon the right of way of such corporate road or railroad, in such manner as to meet the convenience of the owner or owners, and he shall fix a permanent mark or monument at the place of beginning of such portion or allotment and he shall likewise establish a perma-

nent mark or monument at the termination of such portion or allotment and give the exact location of such portion or allotment, its length in feet, and a brief description of the manner in which the work shall be done. Such person or corporation to whom such share or portion has been sold, shall, within the time which shall be reasonable, and which for good cause, such as inclement weather or other unavoidable causes, may be extended under the direction of such county surveyor, with the consent and approval of the Board of Commissioners, construct such part of such work, so set off to him, and if such person or corporation is not ready with a sufficient force to execute and proceed properly and expeditiously with such work when the contractor shall have the work ready for him to begin, in such manner as not to retard or obstruct the progress of the work, or if such person or corporation shall fail or refuse to construct such portion of such work so contracted to him within the time and according to the specifications, or should it become manifest, before the expiration of such time, that such person or corporation would not complete the same, or would be unable to complete the same within the time limited, or in the manner specified, then such person or corporation shall forfeit all rights conferred by his contract to such contractor and shall in addition thereto be liable to such contractor for any damage for any avoidable delay which such contractor may suffer by reason of the neglect or failure of such person or corporation to proceed properly with such work, but such person or corporation so in default shall be allowed on his contract a fair price for the work he has performed up to the time his contract is so annulled, such price to be determined by the county surveyor, with the consent and approval of the Board of Commissioners, letting the contract for the work. If such person or corporation to whom an allotment of work is contracted shall perform his work within the time and according to the manner specified, the price thereof shall be applied on his assessment, and the same shall not be collected of him as hereinafter provided.

**532s. Work completed—Acceptance.** Each ditch or drain shall be cleaned out to a depth and width not less than its original specifications, and all work whether of cleaning and repairing or improving and bettering, shall be done in a workmanlike manner. When finally completed, the work shall be inspected by the county surveyor, and if in substantial conformity with the terms of the contract and according to the specifications furnished to such contractor, shall be accepted by such surveyor: Provided, That the county surveyor may, with the approval and consent of the Board of Commissioners, inspect and accept such work in sections which the county surveyor may recommend and the Board approve, and which will, in their discretion, be most just and equitable to the contractor and the interested landowners. When the work of cleaning and repairing or improving and bettering any ditch or drain is finally completed, and accepted by the county surveyor, such surveyor shall report that fact to the Board of Commissioners, and the same shall be incorporated with and made a part of the record.



**532t. Drainage tax duplicate.** When the assessments for benefits are finally confirmed and established, as provided in section fifteen (15) of this act, the county surveyor shall prepare and certify to the auditor of each and every county in which are situated any lands or other property assessed for the repair and cleaning or the improvement and betterment of such ditch or drain, an assessment roll, in which shall be shown the names of the owners of lands and other property in such county assessed for benefits, the description of the lands and other property so assessed, and the total amount of such assessment. The Board of Commissioners of each county of this state shall, if necessary, provide a well-bound book, appropriately ruled, which shall be known as the "drainage tax duplicate" and in which the auditor of such county shall enter all such assessments as rapidly as they are certified to him, and shall immediately thereafter place one copy of such duplicate in the hands of the county treasurer of such county who shall collect all such taxes recorded therein at the same time and in the same manner in which he collects state and county taxes. Such taxes so levied for cleaning and repairs or improvements and betterments shall be divided into two equal installments, one installment of which shall be due and payable on or before the first Monday in May or November, first succeeding the levy thereof, as the case may be, and the other installment of which shall be due and payable on or before the first Monday in May or November next succeeding the levy thereof as the case may be. All laws now or hereafter in force governing delinquencies, interest and penalties and the sale of property for unpaid state and county taxes shall govern in all such matters relative to drainage taxes levied for any of the purposes of this act, except that in all cases where the first installment of such drainage taxes shall be due and payable with the November installment of state and county taxes, no such property shall be sold for the collection of unpaid drainage taxes until after the May installment shall also become due and unpaid. No money collected for the purposes and under the authority of this act shall be paid out of the county treasury of any county, except by an order duly signed and issued by the Board of Commissioners having jurisdiction of the work of cleaning and repair or improvement and betterment and on warrant of the proper county auditor.

**532u. Emergency fund—When paid.** The emergency fund of any ditch or drain levied in the manner, and at the time, and under the conditions and in the amount prescribed elsewhere in this act, shall be due and collectible in two equal installments at the same time and in the same manner that taxes levied for defraying the cost and expenses of cleaning and repairing or improving and bettering such ditch or drain are due and collectible. If the benefits assessed and collected for the costs and expenses of the cleaning and repair or the improvement and betterment of any ditch or drain, including damages and annual rentals awarded, the costs of the proceedings and any and all other lawful expenses, shall exceed all such costs and expenses, the unexpended balance shall be added to and become a part of the emergency fund of such ditch or drain. Any and all money constituting the emer-



gency fund of any ditch or drain, as herein defined, are hereby declared subject to deposit, and the county treasurer having charge and custody of such emergency fund, or any part thereof, shall deposit all such funds in the depository or depositories of such county, selected by the proper board of finance, and he shall likewise file with the secretary of such board of finance a verified statement of the funds so deposited. Such or any such emergency fund shall not be subject to disbursement or withdrawal except to discharge the obligations authorized as hereinafter provided.

**532v. Purpose of emergency fund.** The emergency fund of any ditch or drain shall be used for the following purposes, and for such purposes only:

1. The replacing of broken or defective tile, including both the cost of the tile required and the necessary labor of installing.

2. The repair of sand-traps, culverts and other similar structures whether of wood, metal, concrete or masonry work, which may be damaged, displaced or destroyed by floods, rain-storms, or the action of the elements, or any other unavoidable cause.

3. The removal of accumulations of earth, sand, gravel, bush, trees, leaves, debris or any other obstructions which if not removed promptly will impound the water and retard its free flow through such ditch or drain.

4. The destruction and removal of weeds, shrubs, brush or other natural growths, as prescribed in section twenty-five (25) of this act.

5. Any other imperative, provisional or temporary repairs which the Board of Commissioners having general supervision of the ditch or drain may authorize and approve, and the total cost of which will not exceed the unexpended balance of the emergency fund of such ditch or drain: Provided, That in the event that the emergency fund of any ditch or drain shall be so nearly exhausted that there is not sufficient funds therein to undertake any temporary or provisional repairs contemplated in this section, and which repairs are of imperative and immediate necessity, the Board of Commissioners having general superintendence of such ditch or drain may authorize the repairs made and after completely extinguishing the emergency fund in payment of the costs and expenses of the repairs, the residue of such costs, and expenses shall be paid in the first instance out of the county treasury of the county in which the proceedings for cleaning, repair, improvement or betterment were had, and shall be repaid to such county treasury together with any interest, at the rate of four per cent. (4%) per annum which has accumulated thereon, out of such emergency fund when subsequently replenished by a new levy of taxes as hereinafter provided.

**532w. Maintenance tax.** It shall be the duty of the Board of Commissioners having general superintendence of any ditch or drain contemplated in this act to provide for the levy of a maintenance tax, when requested to do so by the overseer having charge of the maintenance of such ditch or drain, or on petition of the resident owners of one-tenth (1/10) of the lands or other property, or on petition of one-tenth (1/10) of the resident owners of the lands or other prop-

erty assessed for cleaning and repairs or improvement and betterment the time last preceding, or when the emergency fund of such ditch or drain is exhausted, or likely to be exhausted, by the expenses incurred or to be incurred in defraying the costs of any repairs or contemplated repairs. Such maintenance tax shall be based upon and apportioned according to the assessments made for cleaning and repairing or improving and bettering such ditch or drain the time last preceding such levy, and the total amount of which maintenance tax shall not exceed ten per cent. (10%) of the total amount raised by assessments for such cleaning and repair or improvement and betterment. Such maintenance tax shall be entered on the drainage tax duplicate of the several counties in which are situated any lands or other property assessed for the construction, repair or betterment of such ditch or drain and shall be collected in all respects as is provided by section twenty (20) of this act.

**532x. Appointment of overseer—Duties.** In the event that the petition asking for the cleaning and repair of the improvement and betterment of any ditch or drain shall have contained a request asking for the creation of an emergency fund, such ditch or drain shall, from and after the date of the granting of such petition, be and remain in the permanent custody and under the exclusive jurisdiction of the Board of Commissioners having jurisdiction in the case, and such Board shall have charge and supervision of the maintenance of such ditch or drain, as provided in this act. At the time of approving the work of cleaning and repairing or of improving and bettering any ditch or drain, as accepted by the county surveyor, the Board of Commissioners shall appoint an overseer for such ditch or drain who shall be a landowner, owning lands or other property assessed for the construction and repair or betterment of such ditch or drain, and who shall be a reputable person of intelligence and good judgment. The overseer so appointed shall be the responsible resident agent of the Board of Commissioners; he shall receive two dollars per day for days actually worked for his services and shall hold his office at the pleasure of the Board. The overseer shall be required to perform the following duties:

1. To investigate and report to the Board of Commissioners any temporary or provisional repairs which may be needed from time to time, either on his own initiative, or on request or report of any interested landowner.

2. When authorized by the Board of Commissioners, to let the contract for or hire the necessary labor, and purchase the necessary material, to make such repairs, and when the work is completed to certify that fact to the Board of Commissioners, together with an itemized statement of the expense incurred. If in the judgment of the Board of Commissioners the work has been done in a satisfactory manner and the costs and expenses incurred are just and reasonable, the payment thereof shall be authorized out of the emergency fund of such ditch or drain.

3. To recommend to the Board of Commissioners the necessity

for and the amount of the maintenance tax to be levied for the purpose of replenishing the emergency fund as provided in section twenty-three (23) of this act.

4. To hire the necessary labor to destroy or remove the weeds, shrubs, trees and other natural growths found on the banks of any such ditch or drain as provided in section twenty-five (25) of this act.

**532y. Shrubbery removed in August.** That all shrubs, weeds, brush, trees or other natural growths shall be removed twenty-five (25) feet from center of any open or tiled ditch or drain during the month of August of each and every year, except when such natural growths, other than weeds, protects the washing of the banks of such open drain or ditch, except as hereinafter provided. The necessity for and the manner in which such work shall be performed shall be determined and specified by the overseer having charge of the maintenance of the ditch or drain, by and with the consent or approval of the Board of Commissioners having general superintendence of the ditch or drain. The contract for the labor necessary to remove such natural growths shall be awarded by the overseer, preference being given to the several landowners through whose lands such ditch or drain passes. When the work is completed, that fact shall be certified to the Board of Commissioners by the overseer, together with an itemized statement of the expense incurred. If in the judgment of the Board of Commissioners the work has been done in a satisfactory manner and the costs and expenses incurred are just and reasonable, the payment thereof shall be authorized out of the emergency fund of such ditch or drain. In the event that an emergency fund has not been provided for, all shrubs, brush, weeds, trees and other natural growth twenty-five (25) feet from center of any open or tiled ditch or drain shall be removed during the month of August of each and every year by the several landowners through whose lands such ditch or drain passes, except where such natural growths, other than weeds, protects the washing of the banks of such open drain or ditch. Any overseer or any landowner who shall fail or refuse to perform any of the duties imposed upon him by this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five (25) dollars nor more than fifty (50) dollars: Provided, That nothing contained in this section shall be construed to apply to trees, shrubs or other growths found near any sewer or drain in any incorporated city or town of this state; nor shall any of such provisions be construed to apply to fruit or ornamental trees or shrubs of any description whatsoever growing near a ditch or drain, but in case any such ditch or drain shall be choked or obstructed by any root formation of such fruit or ornamental trees, or shrubs, the owner thereof shall be required to remove such obstructions at his own expense, and on failure to do so shall be subject to the penalties prescribed in this section and in addition thereto double the damages incurred by any landowner because of the presence of such obstruction, the amount of such damages to be ascertained by three (3) disinterested parties to be named by the Board of Commissioners.



**532z. Sanitary districts made a party.** If at the time of the organization of any drainage, sanitary or reclamation district created under the provisions of an act entitled An act concerning the organization of drainage, sanitary and reclamation districts and prescribing their powers and duties, as enacted by the general assembly of the State of Indiana in 1915, and the construction of ditches, drains and other drainage works therein, it shall not be deemed necessary by the chief engineer and the board of supervisors of such district to incorporate with and make a part of the plan for reclamation of such district all ditches and drains connected with the ditches and drains constructed or to be constructed in such district, such ditches or drains so connected with the ditches and drains constructed or to be constructed in such district may be cleaned out and repaired in the same manner and according to the procedure prescribed in this act, except that the district shall be made a party to the proceeding and shall be notified as provided in the preceding sections of this act, and through its proper officers, shall be entitled to be heard on any and all matters affecting the interests of the district, or any landowner therein, or the safety and permanence of the drainage works of such district.

**532aa. Property included.** In the event that any ditch or drain connecting with the ditches and drains constructed or to be constructed by any drainage, sanitary or reclamation district shall not have been included with and incorporated in such district at the time of its organization, or subsequently thereto, a majority of the owners of the lands and other property, or the owners of a major portion of the area in acreage of the lands and other property originally assessed for the construction of such ditch or drain may petition the board of supervisors of such district to have the lands and other property originally assessed for the construction of such ditch or drain included in and incorporated with such district. The petition shall include a description of all of the lands and other property originally assessed for the construction of such ditch or drain and the name or names of the owners thereof as appears by the last tax duplicate or record of transfers kept by the county auditor of the county in which such lands or other property are situated. The board of supervisors shall consider the petition so presented, and shall reply in writing specifying the terms, methods and conditions upon which such incorporation may be effected, all of which terms, methods and conditions shall be approved by the chief engineer and the attorney for the district, and the connection, if established, shall in all cases be in strict accordance with the methods, terms and conditions as specified in the consent. If the consent is obtained and the owner or owners of the lands and other property who shall have signed the petition are satisfied with, and accept the terms, methods and conditions, prescribed therein, all the lands and other property originally assessed for the construction of such ditch or drain shall from the date of acceptance of such consent be deemed a part of the district and the jurisdiction of the board of supervisors shall, from such date, be as complete and exclusive as though such lands and other property had been included with and incorporated in the district when originally created and organized. A



record of all necessary transactions attending the incorporation with the district of the lands and other property described in the petition shall be transcribed in the district drainage record and shall be a public record of such district the same as its other documents. If the petitioners desiring to make such connections, shall be refused by the board of supervisors, or decline to accept the terms, method and conditions prescribed in the consent so obtained, such petitioners may file their petition asking for such connection with the circuit or superior court having jurisdiction in such district, and the matter in controversy shall be determined by such court in a summary manner and such determination shall be binding on the district and the petitioners.

**532bb. Per diem of surveyor.** The county surveyor shall receive in full for his actual services performed in compliance with the provisions of this act the sum of four dollars (\$4.00) per day, and not [to] exceed two dollars (\$2.00) per day for the services of each deputy surveyor, and the same rate for parts of days, to be paid out of the funds raised for the purpose of cleaning and repairing such ditch or drain, upon a report on oath, filed with the clerk of the court or the county auditor. In cases where it is necessary to employ a civil engineer to act in such capacity as a deputy surveyor; then such deputy shall be paid at the rate of four dollars (\$4.00) per day for the time actually employed.

**532cc. Definition.** The expression "cleaning and repairing," as used in this act shall be construed to mean the restoration of the ditch or drain to its original condition and in strict accordance with the original specifications, and not in excess thereof: Provided, however, That if the major part of the proposed work shall consist of cleaning and repairing as herein defined, minor improvements, and betterments, costing in the aggregate not to exceed one hundred dollars (\$100), may be asked for in the petition, considered at the hearing, and authorized by the court or Board of Commissioners if of urgent necessity and in conformity with the spirit and purposes of this act.

The expression "improvement and betterment" as used in this act shall be construed to mean:

1. The enlargement, deepening, widening, straightening or extending of any ditch or drain, including the construction of new parts or additions.

2. The construction, repair, replacement, enlargement, remodeling or modification of sand-traps, culverts, fences, flood-gates or any other timber, concrete, metal or masonry work.

3. The tiling of an existing open ditch or drain.

4. The transformation of an existing tile drain into an open drain by removing the tile and making the necessary excavations.

5. Increasing the capacity of a tile drain by removing the old tile and installing larger tile or sewer pipe.

6. Installing an additional or supplementary line or lines of tile whether parallel and in close proximity to an existing line or lines of tile, or otherwise.

7. Any of the methods hereinbefore enumerated combined which

may be necessary and practicable to facilitate the drainage of the lands and other property affected thereby.

The expression "improvement and betterment" may in all cases be construed to mean the cleaning and repair of any part or parts of a ditch or drain which parts are not to be improved and bettered.

**532dd. Ditch or drain—Definition.** The expression "ditch or drain" as used in this act shall be construed to mean any ditch or drain whether constructed by means of a dredge machine or otherwise and whether a tile drain or an open drain, or partly tiled and partly open, except such or any such ditch or drain which may be constructed under and by virtue of an act of the general assembly of the State of Indiana of 1915 entitled "An act concerning the organization of drainage, sanitary and reclamation districts and prescribing their powers and duties" and except such or any such ditch or drain constructed under and by virtue of any other law of this state if the owners of the lands and other property originally assessed for the construction of such ditch or drain shall elect to avail themselves of the provisions of the above entitled act to organize a maintenance district. For convenience of repair and cleaning or improvement and betterment, the expression "ditch or drain" shall likewise be construed to mean the whole or any fractional part of the main ditch or drain, or the whole of any tributary ditch or drain. The term "court" as used in this act shall be construed to mean the circuit or superior court; the expression "Board of Commissioners" shall be construed to mean the Board of Commissioners of the county. The expressions "originally constructed," "originally assessed," "original specification," and other similar expressions shall be construed to apply to any new construction or reconstruction.

**532ee. Blind ditches.** That where any person shall have converted the whole or any part of that portion of any open ditch or drain running through his lands into a blind ditch by installing drain tile of sufficient dimensions and capacity to adequately serve the purpose of drainage, thus obviating the necessity of cleaning or repairing that part of such ditch or drain so tiled, such tiling shall be taken into consideration in making assessments for cleaning and repairs, and the owner shall receive due credit for the portion so tiled, and the assessment for benefits made shall be abated accordingly.

**532ff. Division of assessments.** In all cases where a division of any tract or parcel of land assessed for cleaning and repairs or improvement and betterment shall be made by sale, transfer, devise, bequest or otherwise, the assessment on such tract or parcel of land may be subdivided by contract, or apportioned by the county surveyor at the instance of the persons interested, and the duties prescribed under this act shall pass to grantees.

**532gg. Conditions for emergency fund.** In the event that the owners of lands and other property originally assessed for the construction of any ditch or drain do not desire to clean or repair or improve or better such ditch or drain in the manner prescribed in this act, but when such owners may desire to provide for the creation of an emer-

gency fund to be used from time to time as the necessity may arise in cleaning, repairing, improving or bettering such ditch or drain, they shall have the right and are hereby authorized to file a petition with the Board of Commissioners asking solely for the creation of an emergency fund which shall not be less than three per cent. (3%) nor more than twenty-five per cent. (25%) of the original cost of the construction of the ditch or drain. Such petition shall state the following:

1. The name, general location, route, length and approximate dimensions or capacity of such drain or ditch, and whether it is a tile [tile] or open drain, and if an open drain whether originally constructed by means of a dredge machine or otherwise.

2. The date on which the original construction work, or in case such ditch or drain shall have been newly constructed or reconstructed the date on which the last preceding reconstruction work, on such ditch or drain, was completed, approved and accepted, and the nature and purpose of any such reconstruction work.

3. If such ditch or drain has ever been cleaned out or repaired, or if any improvements or betterments have ever been made or effected thereon or thereto, the date on which the work of cleaning and repairing or making or effecting such improvements and betterments, the time last preceding was completed, approved and accepted, and the general nature and extent of any such improvements and betterments.

4. The names of the owners of the lands and other property which were originally assessed for the construction of such ditch or drain, together with a description of the lands and other property owned by each, if known, and if the name or names of any owner or owners of any ditch or drain or making the repairs which may be necessary to restore such ditch or drain to its original condition and make it conform to the original specifications, or of making and effecting such improvements and betterments as are specified and prayed for in the petition.

The procedure as to filing the petition giving notice, and the requisite number of signers and any and all other matters shall in all respects be similar to the procedure in cleaning and repairing ditches and drains except that it shall not be necessary for the county surveyor to make any inspection of the lands or other property benefited unless specifically requested to do so by the petitioners.

**532hh. Payments out of county fund.** In the event that the whole or any part of any contract awarded for the cleaning, repair, improvement or betterment of any ditch or drain shall have been satisfactorily completed, approved and accepted, before the assessments shall have been collected in a sufficient amount to satisfy such obligations and debts so incurred, then the amounts so due shall be paid in the first instance out of the county treasury of the county in which the proceedings for cleaning, repair, improvement or betterment were had and when the assessments shall be collected the amounts so advanced, together with any interest, at the rate paid by the depository from which such money was taken, which has accumulated thereon, shall be repaid to said county treasury. Partial payments may be made from

time to time as the work progresses in such proportionate amounts as the Board of Commissioners, on recommendations of the county surveyor, may determine, but in no case shall an amount equal to more than eighty per cent. (80%) be paid on any contract until the work contemplated in such contract is fully completed, approved and accepted. Where any landowner who has entered into a contract to perform any part of such work, or any contractor who has entered into an undertaking to perform the whole or any part of such work shall have completed the work so contracted to him, the surveyor shall issue to such contractor a certificate showing that such work so contracted for has been completed according to the specifications and has been approved and accepted and the amounts paid on such contract with the date of payment and a record of all such certificates including all facts stated therein shall be certified to the county auditor by the county surveyor and shall be made a part of the record of the proceeding in the cleaning, repair, improvement or betterment of such ditch or drain.

**Note:** Secs. 6160 to 6161p, inclusive, of Burns R. S. 1914, are repealed; also Secs. 6252 to 6259, inclusive. All ditches and drains constructed by incorporated drainage district shall be repaired and maintained by such districts in conformity with the Ballou Drainage Act, Acts 1915, p. 208.

All dredge ditches, except those constructed by incorporated drainage districts, shall be repaired and maintained in conformity with this act, viz., Secs. 532a to 532 hh this book.

All other ditches, except dredge ditches and ditches constructed by incorporated drainage districts, shall be repaired and maintained in conformity with this act, or in conformity with the "township" act, Acts 1915, p. 320.

This act, the "county" act, and the "township" act, are declared by statute to be supplemental to each other, as affording optional methods for the repair and maintenance of such ditches and drains as are contemplated by both acts, that is: When a proper petition shall be filed with and be granted by the Board of Commissioners for the cleaning and repairing of such a ditch, such ditch shall thereafter be a "county" ditch, and shall be under the exclusive jurisdiction of the Board; but,

Until such petition shall be filed with the Board and be granted, such ditch shall be and remain a "township" ditch, and be under the jurisdiction of the township trustee as provided by the "township" act, Acts 1915, p. 320.



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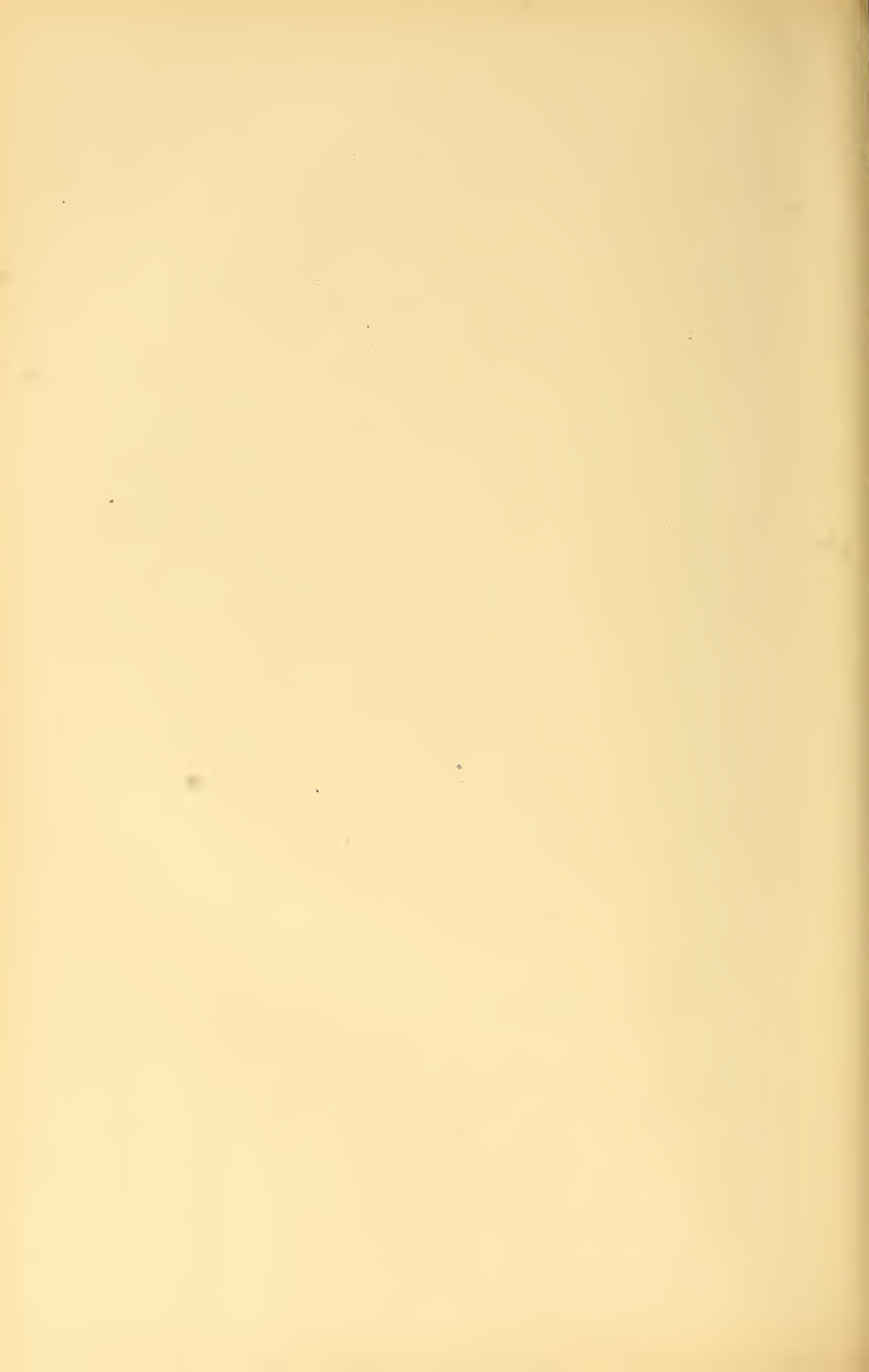
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# INDIANA STATUTES

RELATING TO

## TOWNSHIP TRUSTEES

Concerning Their Duties, Powers and Prohibitions

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ISSUED BY THE  
STATE BOARD OF ACCOUNTS

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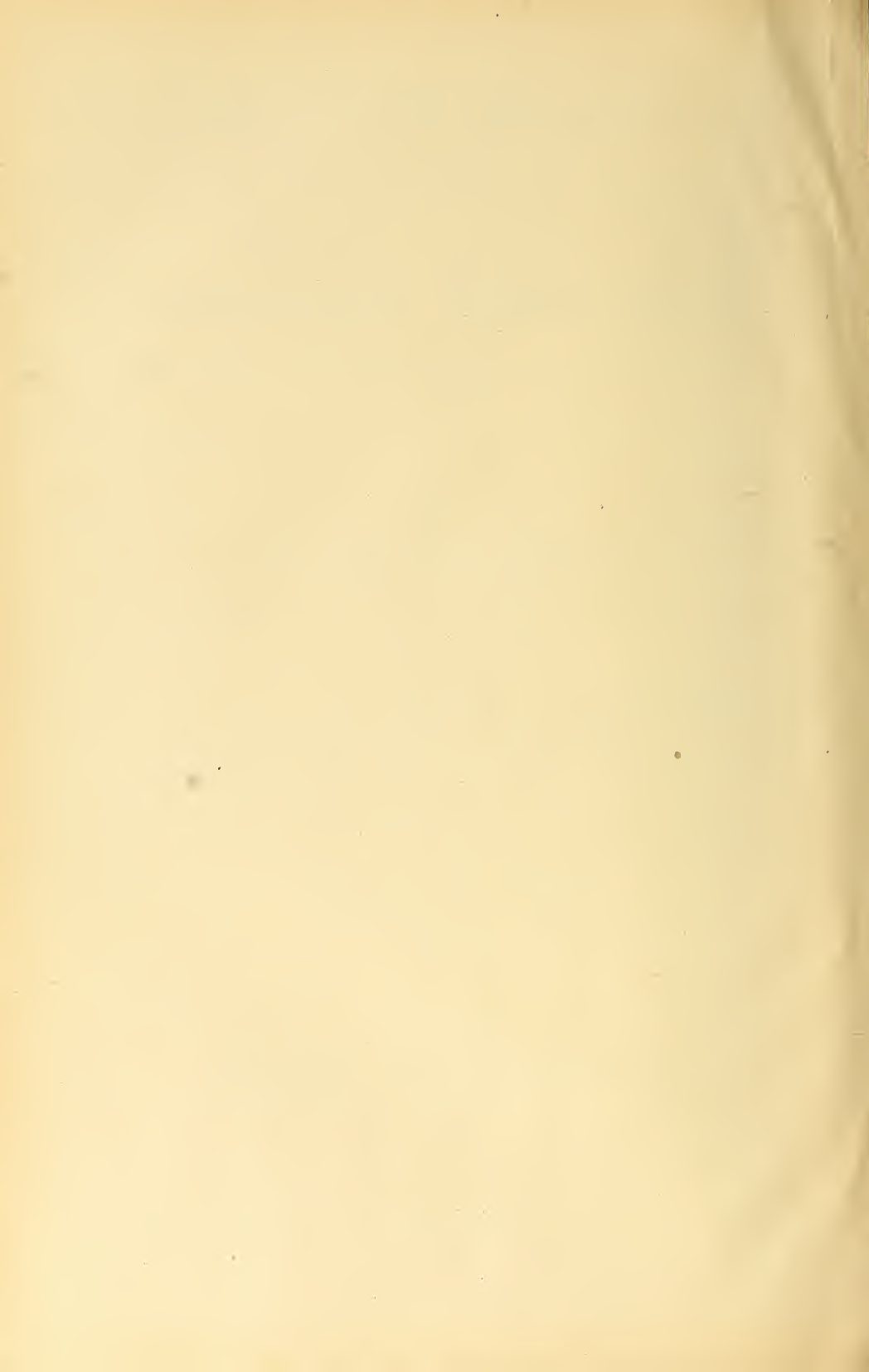
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1915



## PREFACE.

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The offices of county commissioner and township trustee are two of the most important to the taxpayers of the State, for the reason that such officers expend for various purposes, as provided by law, practically three-fourths of the taxes paid by the taxpayers. Such officials should, therefore, know the law governing the expenditure of the various funds coming into their hands.

The laws governing these two important offices have been compiled by this department in separate volumes. The stupendous task of separating and compiling the laws pertaining solely to the duties of these officers and the elimination of all laws repealed directly or by implication has been performed by Mr. George Pence, an expert field examiner, with the assistance of and under the close scrutiny of Mr. George M. Crane, the legal clerk of this department.

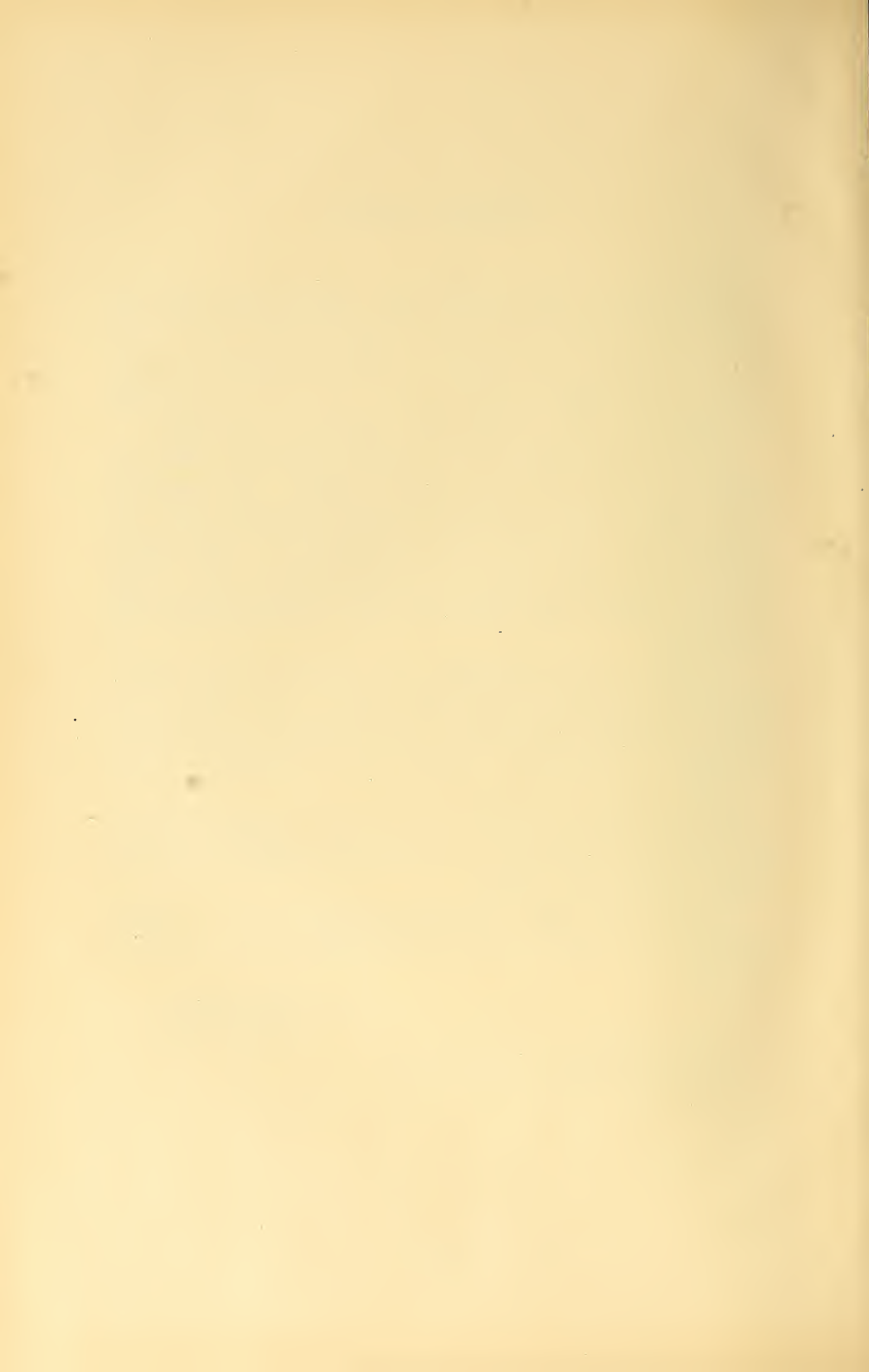
I believe that the information to be derived by such officials from these volumes will be of great value to them, and that the faithful compliance therewith by said commissioners and trustees will save the taxpayers of Indiana tens of thousands of dollars annually.

A copy of the volume concerning the duties of both the county commissioners and township trustees will be mailed to each of the 276 county commissioners, the 92 county auditors and the 92 county attorneys of the State.

A copy of the volume concerning the duties only of township trustees will be mailed to each of the 1,016 township trustees of the State.

G. H. HENDREN,  
State Examiner.

STATE BOARD OF ACCOUNTS,  
Indianapolis, Indiana, May 1, 1915.





# TOWNSHIP TRUSTEE.

## FOREWORD.

The intent of this compilation is to give the gist of all acts of the State governing the township trustee.

Reference should be had to the statutes for more extended information.

The number when used in the date line, of each section, herein, refers to the section in Burns' R. S. 1914. In a few cases it has been deemed wise to set out the act entire.

EDITOR.

## CONSTITUTION.

(Section 153.)

**1. Provisions for Township Officers.** The Constitution of Indiana provides for the election or appointment of the necessary township officers, as may be prescribed by law.

(Section 156.)

**2. Must reside and keep office in township.** All county, township and town officers shall reside within their respective counties, townships and towns; and shall keep their respective offices at such places therein, and perform such duties as may be prescribed by law.

(Section 220.)

**3. Limitation of township's indebtedness—Exceptions.** By the provisions of the amendment to the Constitution of Indiana, adopted March 14, 1881, no municipality can incur an indebtedness, in any manner, in excess of two percentum on its taxable property.

The only exceptions are in time of war, foreign invasion or other great public calamity, and then only on a petition of a majority of its property owners.

(Section 225.)

**4. Tenure of office.** Whenever it is provided by the constitution, or in any law, that any officer, other than a member of the general assembly, shall hold his office for a given term, the same shall be construed to mean that said officer shall hold his office for such term and until his successor shall have been elected and qualified.

## LAYING OFF CIVIL TOWNSHIPS.

(Acts 1859, p. 220, Sec. 9559.)

**5. How civil townships should be laid off.** Boards of county commissioners in each county may lay off and divide the same into any number of townships that the convenience of the citizens may require,

and may, from time to time, make such alterations in the number, names and boundaries of such townships as they may deem proper.

(Acts 1859, p. 220, Sec. 9560.)

**6. Boundaries to be recorded.** Descriptions of boundaries, alterations of boundaries and boundaries of new townships shall be entered at full length on the records of the board of commissioners.

#### ELIGIBILITY LIMITED.

(Acts 1899, p. 425, Sec. 9564.)

**7. Eligible to office, only four out of eight years.** No person shall be eligible to the office of township trustee more than four years in any period of eight years.

#### NUMBER OF TOWNSHIPS AND TRUSTEES.

(Acts 1859, p. 181, Sec. 6404.)

**8. A corporation and a body politic.** The ninety-two counties of Indiana contain 1,016 civil townships. Each township is declared to be a school township, and as such to be a body politic by the name of "\_\_\_\_\_ school, \_\_\_\_\_ township of \_\_\_\_\_ county" according to the name of such township and of the county where organized.

As such corporation it can contract and sue, and be contracted with and be sued in any court of competent jurisdiction.

Under the same act it is provided that each and every township (see Burns' R. S. Sec. 9562) that now is or may hereafter be organized in any county is declared a body politic and corporate, by the name and style of "\_\_\_\_\_ township of \_\_\_\_\_ county," according to the name of township and county in which the same may be organized; and by such name it may contract and be contracted with, sue and be sued in any court having competent jurisdiction.

#### TRUSTEE.

(Section 6405.)

**9. Acts separately in township and school matters.** For each township there is but one trustee, who, in the performance of his duties acts separately as trustee of the civil township and as trustee of the school township.

#### TRUSTEES' BONDS—VACANCY.

(Acts 1865, p. 3, Sec. 6406.)

**10. Auditor fixes amount, approves and accepts.** The county auditor, in fixing the penalty and approving the bonds of township trustee, shall see to the sufficiency of the bonds to secure the school revenues, which may come into their hands, as well as the township and other revenues, during their term.

(Acts 1915, p. 126.)

**10a. Official bond.** Before entering upon the duties of his office the trustee of every township shall execute a bond conditioned as in ordinary official bonds in a penal sum of not less than the amount of money which may come into his hands at any one time as trustee of the civil township and of the school township to the acceptance of the county auditor. Such bond may be executed by a surety company or by two or more freehold sureties to be approved by the county auditor.

**Note:** The premium of such bonds can not be paid out of public funds.

(Section 9103.)

**11. Auditor to file and preserve bond.** This bond must be filed with the county auditor.

(Acts 1 R. S. 1852, p. 166, Sec. 9109.)

**12. Approval of to be indorsed thereon.** The approval of every official bond shall be written thereon by the approver thereof; and no bond shall be filed until lawfully approved.

#### FAILURE TO GIVE BOND.

(Acts 1 R. S. 1852, p. 166, Sec. 9110.)

**13. Failure to give, vacates office.** If any officer of whom an official bond is required shall fail, within ten days after the commencement of his term of office and receipt of his commission or certificate, to give bond in the manner prescribed by law, the office shall be vacant.

(Acts 1865, S. p. 178, Sec. 9116.)

**14. Must be officially acknowledged.** No official bond of any public officer shall be accepted or approved, until the execution thereof shall have been duly acknowledged before some officer authorized to take acknowledgment of deeds, both, by the principal and his sureties executing the same; and such acknowledgment duly certified thereon by such officer taking the same.

**Note:** Failure to acknowledge a bond does not make it void.

#### BONDS—SURETY COMPANIES.

(Acts 1879, p. 192, Sec. 5728-5729.)

**15. Approved surety company's bond.** Bonds executed by surety companies which are authorized to do business in the State by the auditor of state are acceptable as surety on the official bond of the township trustee.

#### COMMISSIONS OF TOWNSHIP OFFICERS.

(Acts 1 R. S. 1852, p. 223, Sec. 9139.)

**16. Election inspectors to issue.** All township officers except constables shall receive certificates of their election from the board of judges (election inspectors) of the townships for which they shall be elected. See Sec. 6987 Burns' R. S.

(Section 9138.)

**17. When given by clerk of circuit court.** Constables receive the certificate of election from the clerk of the circuit court.

#### **REMOVAL FROM TOWNSHIP OF TRUSTEE.**

(Section 9770.)

**18. Trustee to account to successor.** If any trustee, overseer of the poor, shall remove from the township, be removed from office, resign or in any other way vacate his office, he shall immediately deliver over all books, papers and other things concerning his office to his successor, upon his appointment; in the event of his death, his executor or administrator shall, within forty days of his death, deliver over all things belonging to his office to the successor in office.

#### **FAILURE TO SERVE.**

(Acts 1865, p. 3, Sec. 6428.)

**19. Failing to serve—Penalty.** Any person elected or appointed township trustee, who shall fail to qualify and serve as such, shall pay the sum of five dollars, to be recovered as specified in the preceding section for the use therein named, and in like manner added to said fund, unless such person shall have previously served as such trustee.

#### **NEGLECTING DUTIES.**

(Acts 1865, p. 3, Sec. 6427.)

**20. Neglecting duties.** If a trustee shall fail to discharge any of the duties of his office relative to the schools, any person may maintain an action against him for every such offense, in the name of the state of Indiana, and may recover, for the use of the common school fund, any sum not exceeding ten dollars; which sum, when collected, shall be paid into the county treasury, and added by the county auditor to said fund, and reported accordingly.

#### **DELIVERY OF MONEY AND BOOKS TO SUCCESSOR.**

(Acts 1859, p. 220, Sec. 9575.)

**21. Required to account to successor.** The trustee shall at the expiration of his term, deliver to his successor all moneys, books and papers belonging to his township.

#### **TOWNSHIP TRUSTEES—RECORDS—DUTY AS TO REVENUE.**

(Acts 1865, p. 3, Sec. 6408.)

**22. Records to be kept by trustee.** The trustees shall keep a record of their proceedings relative to the schools, including all orders and allowances on account thereof, keeping a separate account of receipts and disbursement of the special school and the tuition funds. State tuition revenue shall not be expended for any other purpose, nor even for tuition purposes in advance of its apportionment.

**Note:** Contracts may be made in anticipation of school revenues, except state revenue for tuition. *Harney v. Wooden*, 30 Ind. 178; *Zartman v. State*, 109 Ind. 360.



**NOTICE OF DAYS FOR BUSINESS.**

(Acts 1875, p. 162, Sec. 9587.)

**23. Days for business—Notice of.** The trustee shall designate certain days in each week or month, as may be required, in which he will attend to the business of his township, and cause notice thereof to be given to the inhabitants of such township; and all contracts and auditing and payment of claims, shall be made only on such designated days.

**SATURDAY CLOSING AND HOLIDAYS.**

(Acts 1907, p. 691, Sec. 9627.)

**24. Saturday half holidays—County Seats 100,000.** In counties containing county seat of 100,000 or more population according to the last preceding United States census, on all legal holidays, and from the first Saturday in June to the last Saturday in October, from noon of all Saturdays, it shall be lawful for all public officers to close their doors for business.

**TOWNSHIP TRUSTEES—DUTIES.**

(Acts 1859, p. 220, Sec. 9565-9566.)

**25. Duties of trustee, by virtue of his office—Other duties—May administer necessary oaths.** The ex-officio duties of the township trustee are: Inspector of elections, overseer of the poor, and fence viewer.

His duties as township trustee in part are:

To keep a true record of his official proceedings in a book to be provided for that purpose.

To receive all moneys belonging to the township, and pay the same out according to law, as right and justice shall require.

To see to a proper application of all moneys belonging to the township for road, school or other purposes, and perform all the duties heretofore required of the township trustee, clerk and treasurer under the school acts.

To have the care and management of all property, real and personal, belonging to the township, and to superintend all the interests thereof.

To have power to administer oaths where necessary, in the discharge of the duties of his office.

**RECORD OF FINANCES.**

(Acts 1899, p. 150, Sec. 9596.)

**26. Must keep a financial record.** Township trustees shall procure and keep a book to be known as the Financial Record. In this book he is required to keep an itemized and accurate account of the affairs of his township, charging himself with each sum of money when and as received, showing the source, date, from whom received and the account to which it shall be credited.

Likewise he shall credit himself with all moneys when and as paid out, showing when, on what account, to whom and out of what fund paid.

**Note:** Such book shall be a public record.

**APPEALS FROM TOWNSHIP TRUSTEES.**

(Acts 1865, p. 3, Sec. 6667.)

**27. In school matters to the county superintendent.** Appeals shall be allowed from decisions of the township trustee in school matters to the county superintendent, who shall promptly decide according to the rules governing appeals from justices of the peace to circuit courts, so far as applicable.

His (superintendent) decisions of all local questions, concerning any school matter, shall be final.

**RESIGNATION.**

(Acts 1 R. S. 1852, Sec. 9141.)

**28. When made, to be filed with auditor.** If a township trustee desires to resign such office, he shall file with the county auditor his written resignation.

(Section 9569.)

**29. Vacancy in office—How filled.** In case of a vacancy, in vacation of the commissioners' court, the auditor shall appoint a person to fill the same.

During term time, the board of county commissioners shall fill such vacancy. All appointments are to cover the unexpired term.

**DOCKET AND OTHER FEES.**

(Acts 1903, p. 177, Sec. 9570.)

**30. Required to be paid to trustee quarterly.** Quarterly, viz.; on March 31, June 30, September 30 and December 31, of each year, each township trustee shall receive from the justices of the peace in his township all docket fees taxed and collected by such justices during each quarter, and shall enter same in his township fund.

In townships having therein a city of not less than 45,000 and not more than 60,000 population, all justice's fees including docket fees must be paid to the trustee quarterly.

**Note:** A portion of the language of the above act, as published in the Acts of 1903, and in Burns' R. S. 1914, is garbled so as to be meaningless. In the Enrolled Act, the language is: "And in all townships in the State having therein a city of not less than 45,000, and not more than 60,000 population \* \* \*. Said Trustees shall quarterly \* \* \* receive from Justices of the Peace all fees taxed and collected by said justices during such quarter, and shall enter the same in the general fund of said township."

In the later edition of Burns' R. S. the mistake is corrected.

(Acts 1903, p. 177, Sec. 9570.)

**31. Trustees must examine justices' dockets, quarterly.** Under this section the trustee is required to examine and settle all accounts and demands against his township. The dockets of all justices within his township are thus required to be examined by the trustee.

**FIRE ESCAPES.**

(Acts 1909, p. 302, Sec. 3841-3847 b.)

**32. When trustee acts as fire chief.** All school buildings and public buildings must be provided with proper means of escape in case of fire.

Fire chiefs of cities are required to see that the law is obeyed in that regard. Section 3847b provides that the trustee shall perform the duties required of fire chiefs, in places that have no fire chief.

**PENALTIES.**

(Acts 1905, p. 584, Sec. 2284.)

**33. Penalty for.** A trustee failing to account to his successor, or failing to pay over to his successor in office all moneys of every description, remaining in his hands at the expiration of the trustee's term, shall be deemed guilty of embezzlement, subject on conviction to a fine not exceeding \$1,000, and five years' imprisonment in the State prison.

**DIVERSION OF FUNDS.**

(Acts 1905, p. 584, Sec. 2292.)

**34. Penalty for.** Any trustee who knowingly diverts, appropriates or applies any funds, or a part of any fund, or money borrowed on bond, to any other use than that for which it was raised, appropriated or borrowed, is deemed guilty of embezzlement and the penalty on conviction is a fine, imprisonment in the State prison and disfranchisement.

**EXTORTION AND OFFICIAL NEGLIGENCE.**

(Acts 1905, p. 584, Sec. 2389.)

**35. Penalty for.** Any public officer who demands or receives any fee or reward, other than that which is allowed by law, for doing his official duty, or charges, asks or receives a greater fee than is allowed by law, or requires any division of fees of a deputy appointed by him, or fails to perform any duty in the manner and within the time prescribed by law, is subject, upon conviction, to a fine and imprisonment in jail for a first offense and State prison and disfranchisement for a second.

**FAILURE TO PERFORM DUTY—PENALTY.**

(Acts 1859, p. 220, Sec. 9581.)

**36. Penalty for.** Should any person, elected or appointed to the office of township trustee, after having accepted such office, fail to perform any duty required by law, such person so failing shall forfeit and pay to such township any sum not exceeding \$100, to be recovered in a civil action in the name of the township, before any court having competent jurisdiction.

**INTOXICATED OFFICER.**

(Acts 1905, p. 584, Sec. 2419.)

**37. Penalty for intoxication during business hours.** Whoever, holding an office under the Constitution and laws of this State, becomes, or is intoxicated during the business hours of his office, shall, on conviction, be fined not less than \$10 nor more than \$100, to which may be added imprisonment in the county jail not more than ten days; and for the second offense he may be deprived of his office by the judgment of the proper circuit court.

**UNLAWFUL INTEREST IN PUBLIC CONTRACTS.**

(Acts 1905, p. 584, Sec. 2423.)

**38. Penalty for.** A township trustee who shall be interested in any contract for the construction of a schoolhouse, bridge or public building, or work of any kind erected or built for the use of a township, or who shall bargain for or receive any percentage, draw-back, premium or profits, or money, on any contract, or making any appointment wherein the township is concerned, is subject, upon conviction, to fine, imprisonment in the State prison and disfranchisement.

**REFUSAL TO PAY JUST CLAIMS.**

(Acts 1905, p. 584, Sec. 2424.)

**39. Penalty for.** If any township trustee unlawfully refuses to pay a just claim, or demand, against any fund of the township, when the money belonging to such fund is in his hands, he is subject, upon conviction, to a fine not less than \$10 nor more than \$50.

**FRAUD BY OFFICER—ELECTIONS.**

(Acts 1881, S. p. 174, Sec. 2571.)

**40. Penalty for.** Whoever being a township trustee, inspector, judge or clerk of election takes out of the ballot box any ballot legally deposited therein, with intent to destroy or substituting another in its place, with intent to prevent the same from being counted; or who knowingly enters upon the poll books the name of any person who has not legally voted at such election; or intentionally tallies any vote to any candidate not voted for by such ballot, or permits any of these to be done, is subject, upon conviction to fine, imprisonment and disfranchisement.

**ALTERING RETURNS—ELECTIONS.**

(Acts 1881, S. p. 174, Sec. 2572.)

**41. Penalty for.** Any township trustee, inspector, or any person acting for them, while forming a board of canvassers, who shall, with intent to defraud, alter any election return, as made by the election board of any voting precinct, either by increasing the vote of any candidate, or reducing the same; or shall intentionally destroy, mis-



place or lose any poll book or tally sheet, or who shall consent or permit the clerk of the court, to make such change, is subject upon conviction, to a fine, imprisonment in the State prison and disfranchisement.

#### **REFUSING TO RECEIVE VOTE.**

(Acts 1881, S. p. 174, Sec. 2573.)

**42. Penalty for.** Whoever being an inspector or judge of any election, knowingly, wilfully or corruptly, refuses or neglects to receive the vote of any legal voter at any election, within this State, is subject, upon conviction, to a fine, disfranchisement and rendered incapable of holding any office of trust and profit for any determinate period.

#### **PERSUADING VOTER.**

(Acts 1881, S. p. 174, Sec. 2574.)

**43. Penalty for.** Whoever being an inspector, judge or clerk of an election, attempts to induce, by persuasion, menace, reward, or promise of same, any elector to vote for any person, shall be subject to a fine of \$10 to \$100.

#### **OFFICER OPENING OR MARKING TICKET.**

(Acts 1881, S. p. 174, Sec. 3575.)

**44. Penalty for.** Whoever being a judge, inspector, clerk or other officer of an election, opens or marks, by folding or otherwise, any ticket presented by an elector, or suffers it to be done by another, before such ticket is deposited in the ballot box, shall be fined, disfranchised and rendered incapable of holding any office of trust and profit for any determinate period.

#### **FALSE CLAIMS.**

(Acts 1905, p. 584, Sec. 2586.)

**45. Penalty for presenting, for payment.** Whoever, knowing the same to be false or fraudulent, makes out or presents for payment or certifies as correct to \* \* \* the trustee or accounting officer of any civil or school township, any false or fraudulent claim, bill, note, bond, account or other evidence of indebtedness, for purpose of procuring payment thereof, upon conviction shall be imprisoned in the State prison two to fourteen years, and fined \$10 to \$1,000, and whoever receives payment of such claim, knowing the same to be false and fraudulent, shall be punished likewise.

#### **DOG TAX—PENALTY AGAINST OFFICER.**

(Acts 1897, p. 178, Sec. 3263.)

**46. Penalty for failure to perform duty.** Any township trustee or township assessor who shall fail to perform his duty relating to collection of dog tax or who shall fail to report delinquent dog owners, shall be liable to a fine of \$10 to \$20.

**DOGS—FALSE STATEMENTS.**

(Acts 1897, p. 178, Sec. 3264.)

**47. Penalty for false statement.** Any false statement made to a township assessor or township trustee relative to number, sex or age of a dog by a person owning, keeping or harboring a dog subjects such person to a fine not exceeding \$100.

**FAILURE TO ACCOUNT—PENALTY.**

(Acts 1905, p. 584, Sec. 2283.)

**48. Penalty.** Any trustee who fraudulently fails or refuses, at any time during the term for which he was elected or appointed, when legally required to so do by the proper person or authority, to account for, deliver and pay over to such person or persons as may be lawfully entitled to receive the same, all moneys, choses in action, or other property which may come into his hands by virtue of his office, is deemed guilty of embezzlement, and the penalty on conviction is a fine, not exceeding \$1,000, and imprisonment in State prison and disfranchisement.

**ADVISORY BOARD.**

(Acts 1899, p. 15, Sec. 9590.)

**49. Beginning of term.** The term of office of the members of the advisory board shall be for two years from the day following their first election and until their successors are elected and qualified, and the term of office shall thereafter be for the term of four years from the day following their election and until their successors are elected and qualified.

(Acts 1899, p. 150, Sec. 9590.)

**50. Election of—General Duties—Organization—Quorum.** At the time of electing township trustees, the voters shall elect an advisory board for the township. By inference the provisions of the amending act 1911, Sec. 6983 Burns' R. S., which extended the election of township trustees and township assessors from November, 1912, to November, 1914, also extended the election of the advisory boards.

The advisory board consists of three members and vacancies are filled by the remaining members.

This board is required to assemble on the first Tuesday of September each year, in annual session, at some convenient place in the township, and two members shall constitute a quorum.

At such meeting the board shall consider the various estimates of township expenditures proposed by the township trustee, and shall have power to concur in such estimates, in whole or part; or to reject, in whole or part.

Any existing indebtedness of the township need not be paid until due.

When the board shall have determined upon the estimates and amounts for which taxes should be levied upon the property and polls within the township for the ensuing year, it shall then determine and

fix the rates of taxation, upon such property and polls as to the estimated purposes, severally.

The rates so determined by the board shall be certified to the county auditor, who shall place the same upon the tax duplicate, and the same collected and enforced by law.

One of the members shall be elected chairman and another member as secretary of the board.

The secretary shall record, in a book to be furnished by the trustee, all the proceedings in full of any meeting, under the direction of the board, which shall be signed before the board adjourns.

Such book shall be a part of the records of the township, and known as "The record of the Advisory Board of \_\_\_\_\_ township" and it shall remain in the custody of the chairman of the board.

The board has the power to adjourn from day to day till its business is completed.

**Note:** No action of the members of the advisory board has any force in law except the action be taken at a meeting of the board when a quorum is present and a record of such action be made and entered upon the advisory board record and signed by the members before the meeting adjourns.

(Acts 1915, p. 358.)

**50a. Taxation—Townships—Tax levy.** Each advisory board in the several townships of the State shall, at the annual September meeting of the board, levy a tax for township funds upon all the taxable property within the township, including the taxable property in cities and incorporated towns within the boundaries of the township.

## IMPROVEMENT AND REPAIR OF HIGHWAYS BY USE OF ROAD TAX.

(Acts 1913, p. 873, Sec. 7780.)

**51. Must be let to the lowest responsible bidder—Notices.** Under Sec. 20 of the new highway law, 1913, the township trustee may let to the lowest responsible bidder the improvement or repair of highways and bridges, or any part thereof, in his township, under regulations prescribed by him. Notice of the time and place of receiving bids must be posted in three of the most public places in the township.

**Note:** Such contracts must be let upon notice and bids. Moss v. Sugar Ridge Tp., 161 Ind. 417.

**Note:** It is believed that the 1913 act, p. 873, Section 51, this book, governs as to the expenditures of road taxes. By Section 1347 Burns' R. S. it is provided, in case there are not published in said county newspapers representing two political parties casting votes at the last preceding general election, then in such case one of such notices or reports, shall be published in an independent newspaper.

## GENERAL SUGGESTIONS.

**52. General suggestions.** The matter of township supplies, both civil and school, is one of the greatest importance. In the aggregate, the expenditures of the township trustees of the State for supplies of

different kinds amounts to a very large sum annually. To the end that there may be no unnecessary purchases it is the duty of each trustee to see that there is no needless waste and that all articles belonging to the township are properly used and protected. At the close of the schools, teachers should be required in their report to make an itemized and detailed statement as to the amount and condition of all property, furniture and materials under their supervision and the probable needs for the next school term. Road supervisors, drivers of school wagons and school janitors should be required to properly protect all property in their charge or under their supervision. By reports from all persons using township property and by personal inspection and inquiry, the trustee will be able to make an intelligent estimate of the township needs.

**53. School supplies—Estimate and classification.** If the trustee desires to purchase any school furniture, wagons, fixtures, maps, charts or other school supplies (excepting fuel and literary periodicals, as may be authorized by the advisory board) he must make an estimate of the kinds and amounts, itemized particularly and properly classified, to be used by bidders upon the giving of public notice. The only exception made by the statute is as to fuel and literary periodicals; all other supplies must be purchased after notice and bids. (Section 9598, Burns' R. S. 1914.)

**54. Other supplies—Road machinery—Bridge materials, etc.** A like course should be followed by the trustee in the purchase of all other supplies and materials for township use wherever practicable. Especially is this required in buying road machinery and tools of all kinds and bridge and culvert materials. It may also be advisable in some instances to buy gravel, stone or other road-making materials by notice and competitive bidding.

**55. Plans and specifications required.** If the trustee finds it necessary to erect a new schoolhouse, he must procure suitable plans and specifications therefor to be used by the bidders in bidding and in the construction of such house. The plans and specifications, as to sanitary arrangements, must be in accordance with the rules of the state board of health.

**Note:** See Sec. 248 this book.

**56. Bids for repair work on schoolhouses.** If it is necessary to make repairs on or about schoolhouses, other than current or incidental repairs, the trustee must make an itemized statement of the nature and character of the work for the use of bidders. The current and incidental repairs which the trustee is authorized to make without notice and bids relate to such matters as broken windows, doors, heating apparatus and other things likely to occur from day to day and requiring immediate repair.

**57. Plans and specifications to be procured.** When bridges are to be constructed or repaired in a township in any year the trustee, under the township act of 1899, must make for the use of bidders a sufficient schedule and such specifications of such work as may be necessary.

**58. The \$100 law, as to payment for bridges.** Again, is mention made in reference to the Act of 1913, p. 609, which provides that all



bridges erected or repaired, when the cost shall not exceed \$100, shall be paid by the township trustee from the township road fund.

**60. Requirements as to letting of contracts—Notice how given.** Under the township act of 1899 it is provided that all contracts shall be let after notice by posting for three weeks in five of the most public places in the township and also at or near the door of each postoffice therein, stating briefly the buildings, repairs or supplies sought to be let and when and where bids will be received and opened. If the contemplated expenditures in any class (buildings being one class, repairs a class, supplies a class, and so on) shall be \$500 or more, in addition to the posting there must be a publication of the notice one time in two leading newspapers of the county representing the two political parties casting the highest number of votes in such county at the last preceding general election. If there is a newspaper published in the township one of such notices must be published in it.

**Note:** It is believed that the 1913 act, Section 59, this book, governs as to the expenditure of road taxes. By Section 1347 Burns' R. S. it is provided, in case there are not published in said county newspapers representing two political parties casting votes at the last preceding general election, then in such case one of such notices or reports, shall be published in an independent newspaper.

(Section 1346a.)

**61. May publish in a daily or weekly newspaper.** Under another act, 1913, p. 761, it is provided that the trustee may lawfully make such publications in either a daily or weekly newspaper.

### BIDS, RECEIVING AND ACTION ON.

**62. Advisory board must be present when trustee opens bids—Written bids—Opened publicly.** All bids must be in writing and must be opened and read publicly at the time and place fixed in the notice. The trustee may take time to examine and satisfy himself as to which is the lowest and best bid and must advise with the advisory board thereon. The advisory board must be present at the letting and has authority to reject any and all bids. When action has been taken, the trustee must endorse on the bids whether rejected or accepted and must preserve the bids in his office.

### BIDS, HOW RECEIVED.

(Acts 1913, p. 650, Sec. 5896a.)

**63. Bids need not be submitted earlier than time of meeting.** No officer authorized by law to let contracts for public work has authority to require any bidder to submit his bid at any time earlier than the open meeting at which it is to be received. All such meetings for receiving bids shall be open to the public and all bidders shall be entitled to attend.

All contracts for public work let contrary to these provisions shall be void.

### WHEN CONTRACT IS VOID.

**64. When contract is void.** Any contract made in violation of the township act of 1899 (Advisory Board Act), and its amendments is null and void.

**65. Contracts how let.** When a bid is accepted a proper contract in writing, signed by the trustee and the successful bidder, must be entered into for such building, bridge construction, repairs or supplies, as the case may be. All the work or supplies in any one class must be included and let in a single contract.

**66. Noncollusion affidavit and bond.** All bids must contain the statement and affidavit set out in "Form 9" prescribed by the state board of accounts; and when a contract has been entered into the trustee must require the bidder to give bond, with security to be approved by him, for the faithful execution of such contract.

**67. Annual January financial report and settlement—When and how made.** The trustee's annual report and settlement is provided for by the township act of 1899, as amended in 1901. Briefly stated, the requirements as to the report are as follows:

The report must be presented to the advisory board at an annual meeting to be held on the first Tuesday after first Monday in January. Where, however, the trustee's term expires before that date, or he shall die or resign, then he or his administrator, as the case may be, shall at once make final settlement with the board.

It must be a complete report of all receipts and expenditures for the preceding calendar year, with the balance to the credit of each fund.

If the trustee has any money from any source on his hands or under his control which is not included in any particular fund, as shown by his report, all facts concerning such money must be stated.

Each item of expenditure must be accompanied by a verified voucher, signed by the person receiving the money. The form of this voucher has been prescribed by the state board of accounts. The trustee is empowered to administer the oath to the person signing the voucher.

The report must be verified by the oath of the trustee showing that the sums with which he is charged in the report are all the sums received by him; that the various items of expenditure credited have been fully paid in the sums stated, without any agreement that any portion thereof shall be retained by or repaid to him or to any other person; and that such trustee has received no money nor article of value in consideration of any contract made by him as such trustee.

### ALLOWANCE BY ADVISORY BOARD.

**68. Allowance of per diem to trustee.** The trustee who receives per diem and not salary must file with the advisory board at its annual meeting in January an itemized statement, verified by his oath, of his services as trustee and such board shall fix and allow the number of days for which the trustee is entitled to be paid, and he is entitled to no other compensation for his service as trustee.

**Note:** For law as to clerk hire, expenses and office rent, see Section 73, this book.

### DUTY OF ADVISORY BOARD.

**69. Duties as to trustee's annual January report.** The advisory board shall consider the trustee's report when it is presented to such board and approve it in whole or in part.

Any sum appropriated and remaining in the hands of the trustee, unexpended, and for which no liability exists against the township, must be deemed and credited in favor of the fund for which it was appropriated, and must be considered in the ensuing levy.

The expenditure of any fund, in whole or in part, to any account for which it was not appropriated by the advisory board must be deemed by such board as a balance of such fund unexpended and still in the hands of the trustee, for which he is liable on his bond.

Any member of the advisory board may administer oaths, and the board may send for persons, books and papers, if necessary, in the examination of the trustee's report; and when the examination is closed the board must enter of record its action on the report, specifically stating such parts and items as may be altered or disallowed.

The trustee's report shall remain under the control of the advisory board and in the custody of the chairman of such board and may be inspected at any time by any taxpayer of the township. The vouchers accompanying the report, however, must be filed with the county auditor.

### COPY OF REPORT TO AUDITOR—TIME OF FILING AND PENALTY.

**70. Copy of report to auditor—Penalty—Vouchers.** After the annual settlement has been made, the trustee must, within ten days thereafter, file a copy of his report as adopted by the advisory board, with the accompanying vouchers, in the office of the county auditor, to be preserved. If the copy is not so filed within ten days the trustee is subject to a forfeiture of \$5.00 for each day's delay, to be collected by the advisory board for the benefit of the township.

### AUDITOR'S DUTY TO EXAMINE TRUSTEE'S REPORT.

(Section 9597.)

**71. Auditor's duties—Examination within 10 days.** The auditor must examine the copy of the report filed with him and within ten days after such filing must report to the advisory board the result of such examination, including his finding as to the accuracy of the report.

### PUBLICATION OF REPORT—PENALTY FOR FAILURE.

**72. Newspaper publication within four weeks.** Under an act of 1907 (Section 9573, Rev. Stat. 1914), the township trustee, within four weeks from the time of filing his annual report, must cause the receipts and expenditures by items, as they appear in such report, to be given newspaper publication as in said section provided. If the trustee fails to make such publication the county auditor shall cause it to be done. Each newspaper publishing the same shall be entitled to five cents for each item of such receipts and expenditures, to be paid out of the township fund and not more than one item shall be printed in

one line. For a failure to make publication of the report a fine of \$25.00 is provided.

Townships having a population of 100,000 inhabitants or more are excepted from the above requirements and must cause publication to be made under Section 9597, Burns' R. S. 1914.

**Note:** As to publication see Sections 60 and 61, this book.

### ESTIMATES OF EXPENDITURES.

(Acts 1915, p. 131, amending Sec. 9593.)

**73. Trustee must attend all meetings—Estimates.** The trustee shall attend all of the meetings of the advisory board, and at the annual meeting thereof, after the board shall have organized, he shall present a detailed and itemized statement in writing of his estimated expenditures for which appropriations are asked, specifying the number of teachers necessarily employed, their salaries respectively, the number of days deemed necessary for the discharge of the duties of his office, and the days of the week or month when they can be most advantageously performed, the extent of needed bridge and highway repairs, an accurate, itemized list of all the property and supplies on hand, whether in use or in store, for road, school and other purposes and estimated value thereof, the items of school supplies necessary for each school, the condition of pauperism in the township, including the names of such persons as have received public aid, since the taking effect of this act, and since the last annual meeting of the board, with the respective amount received by each person. And also the items, severally to be charged against the township funds, including salaries, clerk hire when same is necessary, stationery, printing and records, and supplies to be furnished to the justices of the township, the trustee's compensation, and his actual expense to be incurred in the transacting of township business, and his office rent, where an office is authorized by such advisory board, and any other items of expense payable from said fund; and he shall submit to such inquiries concerning the expenditures of his office as the board, or the taxpayers present, may deem proper to make. The advisory board shall have full power to require any estimate, not sufficiently itemized, to be so itemized by the trustee, and to appropriate for any purpose a sum not greater than that estimated in the item therefor, except by the unanimous vote of the board, and not otherwise, an appropriation may be made for an item not contained in an estimate, or for a greater amount than that named in any item of an estimate: Provided, further, That all items of expense herein enumerated shall be paid from the proper funds of the township: and Provided, That in townships containing a population of less than 5,000 inhabitants, no clerk hire shall be allowed or paid; that in such townships the advisory board may authorize the trustee to pay as office rent a sum not to exceed \$60.00 per annum, and such trustee may, if authorized by the board, keep his office in his residence or his own property, and pay to himself the rent therefor; that in such townships, the advisory board may authorize the trustee to pay his actual expenses in transacting his official business, including stationery, printing and records, and may authorize the trustee to use his own prop-



erty, as means of convenience in transacting such business, but the total expenses to be so allowed and paid, other than office rent, shall not exceed \$100.00 per year in such townships; that in townships containing a population of 5,000 and less than 10,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$100.00 per year; for office rent a sum not to exceed \$90.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, and may authorize the trustee to use his own property as means of convenience in transacting such business, but the total expenses to be so allowed and paid, other than office rent, shall not exceed \$200.00 per year; and Provided, That in townships containing 10,000 and less than 15,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$250.00 per year; for office rent a sum not to exceed \$120.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, a sum not to exceed \$250.00 per year: and Provided, That in townships containing 15,000 and less than 20,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$450.00 per year; for office rent a sum not to exceed \$120.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, a sum not to exceed \$300.00 per year, and Provided, That in townships containing 20,000 and less than 30,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$600.00 per year; for office rent a sum not to exceed \$180.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, a sum not to exceed \$350 per year and Provided, That in townships containing 30,000 and less than 40,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$900.00 per year; for office rent a sum not to exceed \$240.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, a sum not to exceed \$500.00 per year, and Provided, That in townships containing 40,000 and less than 100,000 inhabitants, the advisory board may authorize the trustee to pay, if the board deems necessary and proper, for clerk hire a sum not to exceed \$1,200.00 per year; for office rent a sum not to exceed \$300.00 per year; for actual expenses in transacting the business of the office, including stationery, printing and records, a sum not to exceed \$600.00 per year; the inhabitants of all such townships to be determined by the last preceding United States census. All appropriations for clerk hire, for office rent, and for actual expenses in transacting the business of the office of trustee, shall be made at the annual September meeting and at no other time. In any case, before the trustee shall draw his warrant for any money to be paid out by reason of the items of expense, including clerk hire and office rent, authorized by this act, he shall require to be filed with him, as trustee, an itemized voucher

of such expense, clerk hire or office rent, properly subscribed and sworn to.

No trustee shall have credit for any money paid by him, except he shall show a receipt therefor for each item thereof from the person to whom such payment was made.

Sec. 2. This act shall in no way affect any pending litigation.

**Note:** Estimates for road purposes and levies therefor are now made on or before the first Tuesday in June. See Section 314, this book.

### NOTICE OF ANNUAL MEETING.

(Acts 1899, p. 150, Sec. 9592.)

74. Notice advisory board meeting—Legal rates for same. Notice of the annual meeting of the advisory board must be given by the trustee at least 30 and not more than 40 days before it is to be held by posting at or near the door of all postoffices in the township and by publishing, one insertion, during the first week in August, in each of the two leading newspapers published within the county, a statement of the several estimates and amounts of the proposed annual expenditures; the rates of taxation proposed for levy against the property to be expended for the ensuing year, for the following funds:

1. Township.
2. Local tuition.
3. Special school.
4. Road.
5. Additional road.
6. Library.
7. Poor.
8. Other items.

The act limits the cost of such publication at \$2 to any one newspaper in any one year, and the posting at \$1.50.

The trustee is required to furnish within this period to each member of the advisory board a statement of such estimates and amounts. He shall also procure and lay before the board, at its annual meeting, the assessed valuation of the taxable property, together with the number of polls, of his township.

### RIGHT OF TAXPAYER TO ATTEND MEETING.

(Acts 1899, p. 150, Sec. 9591.)

75. Meetings of advisory board—Taxpayer's right to be present. Any taxpayer has the right to appear and be heard as to any matter being considered by the advisory board.

### TOWNSHIP TRUSTEE—ADVISORY BOARDS—TRANSFER OF FUNDS.

(Acts 1913, p. 551.)

76. When surplus road funds transferred to special school fund. If it appears to the advisory board of any township in the State of Indiana, at the next annual September meeting of such board, that

there is a surplus of the road funds of such township that will not be needed for road purposes then such advisory board may, by a unanimous vote, pass a resolution and spread the same upon the minutes of such board, directing the trustee of such township to transfer all or any specified portion of such surplus road fund, to the special school fund of such township, and when any such advisory board shall make any such order it shall be the duty of the trustee to transfer said fund in compliance to such order, which fund so transferred shall become a part of the special school fund of such township and be used for special school purposes.

**Note:** It is believed that such transfer may be made at any annual meeting.

### **SPECIAL MEETINGS—LOANS.**

(Acts 1913, p. 276, Sec. 9595.)

**77. Only power to create debt for joint school building—Emergency expenditures.** Upon a special call of the township trustee, or the chairman of the advisory board or a majority of the members of said board, given in writing to each member thereof, stating the time, place and purpose of the meeting, said board may, if a quorum be present, by consent of a majority of all the members present, determine whether an emergency exists for the expenditure of any sums not included in the existing estimates and levy. In the event that such an emergency is found to exist said board may authorize by special order entered and signed upon the record, the trustee to borrow a sum of money to be named sufficient to meet such emergency; and at the next annual session of the board a levy shall be made to the credit of the fund for which such expenditure is made to cover and pay the debt so created: Provided, however, That if at any annual or special meeting of said board it shall be found indispensably necessary to provide for the construction of a school building, the cost of which building or the proportionate cost thereof if the same be a joint graded high school building will be in excess of the sum available therefor out of any annual levy, then in that event such board may authorize such trustee to issue township warrants or bonds to pay for such building, or the proportionate cost thereof, such warrants or bonds to run for a period of not exceeding fifteen (15) years; and to bear not exceeding six per centum per annum, and to be sold for not less than par; the township trustee, before issuing such warrants or bonds, shall advertise that bonds are to be sold in not less than one issue a week for three weeks, in one paper of general circulation in the county and one paper of general circulation in the State capital, setting forth the amount of bonds offered, the denomination, the period to run, rate of interest and the date, place and hour of selling. The township advisory board shall attend the sale of bonds and shall concur therein before such bonds are sold. The board shall annually levy sufficient taxes to pay at least one-fifteenth of such warrants or bonds, with interest, each year, and the trustee shall apply such annual tax to the payment of such warrants or bonds each year. In no event shall a debt of the township be created except by the advisory board of such township, and

in the manner herein specified, and any payment of any debt not so authorized from the public funds of such township shall be recoverable upon the bond of the trustee in a suit, which it is hereby made the duty of said board to institute and prosecute in the name of the State, for the use of said township. And said board is hereby empowered to appropriate, and the township trustee shall pay out of the township funds a reasonable sum for attorney's fees for such purpose. And if the board, on the written demand of any taxpayer, fails for thirty (30) days to bring suit, then such or any other taxpayer may bring the same, in the name of the State, for the use of the township: Provided, however, nothing contained herein shall affect any pending litigation.

**Note:** Trustees have no power to contract beyond the funds available from present tax levies, unless the funds are raised by virtue of this section. *Mitcheltree Twp. v. Baker*, 53 Ind. App. 472.

(Acts 1913, p. 487.)

**78. Act 1913 inoperative.**

**Note:** By the amending act 1913, approved March 10, 1913, gave the Advisory Board power at special meetings to authorize the Township Trustee to borrow money to purchase road machinery, dredges or machinery for hoisting road material, or other township business.

This act is believed to be inoperative for the reason that the act amended 1913, p. 276, was approved on March 6, four days sooner, and carried an emergency clause.

**TAXATION—TUITION FUND, SUPPLEMENTARY.**

(Acts 1903, p. 409, Sec. 6443.)

**79. Supplementary tuition fund—Limitation—Application.** The school trustees of the several townships, towns and cities shall have power to levy annually a tax not exceeding fifty cents on each one hundred dollars of taxable property and twenty-five cents on each taxable poll, which tax shall be assessed and collected as the taxes of the State and county revenues are assessed and collected, and the revenues arising from such tax levy shall constitute a supplementary tuition fund, to extend the terms of school in said townships, towns and cities after the tuition fund apportioned to such townships, towns and cities from the State tuition revenues shall be exhausted: Provided, however, That should there be remaining in the tuition fund of any township, town or city levying such tax at the close of any school year any unexpended balances of such supplementary tuition fund assessed and collected for use in such school year, or previous years, equal to or exceeding in amount one cent upon each one hundred dollars of taxable property in said township, town or city, then it shall be the duty of the county auditor to take notice of the same, and at the time when the trustee or trustees of such school corporation shall make the annual levy for such tax such trustee or trustees shall make, under oath, an estimate of the amount of supplementary tuition fund that will be required to meet the actual expenses of the schools for the next



school year, and from such estimate said auditor shall deduct the unexpended balance of such fund in such trustee or trustees' hands on the first Monday of July, and the said trustee or trustees shall make a levy not larger than shall be sufficient to produce a supplemental revenue equal to the amount remaining of such sworn estimate after such unexpended balance shall have been deducted therefrom.

#### **TAXATION—LOCAL TAX, HOW APPLIED.**

(Acts 1895, p. 153, Sec. 6444.)

**80. Local tuition tax to be applied within township.** The funds arising from tax shall be under the charge and control of the same officers, secured by the same guarantees, subject to the same rules and regulations, and applied and expended in the same manner as funds arising from taxation for common school purposes by the laws of this State: Provided, That the funds assessed and collected in any school township, school town or school city shall be applied and expended in the same school township, town or city in which such funds shall have been assessed and collected. (R. S. 1914, Sec. 6444.)

**Note:** Anticipating. This revenue is not forbidden to be anticipated, as is the State's tuition revenue.—Harney v. Wooden, 30 Ind. 178.

#### **SPECIAL TAX. (SANITARY SCHOOLS.)**

(Section 6616d.)

**81. Limitation of rate—Construction sanitary school house.** For the construction of sanitary school buildings by township trustees, and to carry out certain hygienic and sanitary requirements, the school trustee was empowered by the Act of 1911 p. 118 to levy a tax not to exceed 5 cents on the \$100 to be added to the special school fund, to be used only for building and furnishing of such school houses, such levy not to be made unless plainly necessary. The limit of the levy was increased to 15 cents on the \$100 by the Amendment of 1913 at p. 71.

#### **TAXATION—SPECIAL SCHOOL TAX.**

(Acts 1905, p. 491, Sec. 6441.)

**82. Special school tax—When used to pay teachers.** The trustees of the several townships, towns and cities, shall have the power to levy a special tax, in their respective townships, towns or cities, for the construction, renting or repairing of school houses, providing furniture, school apparatus, and fuel therefor, and for the payment of other necessary expenses of the school, including tuition and teachers' salaries, whenever in any current year the tuition funds shall have been exhausted; but no tax shall exceed the sum of fifty cents on each one hundred dollars worth of taxable property, and one dollar (\$1.00) on each poll, in any one year, and the income from said tax shall be denominated the special school revenue,

**SPECIAL SCHOOL FUND—TRANSFER TO TOWNSHIP FUND.**

(Acts 1907, p. 340, Sec. 6446.)

**83. Transfer of township fund to special school, when.** Whenever a township shall have collected a special tax for the specific purpose of erecting or constructing a school building and the trustee having decided to abandon the erection thereof, it shall then be his duty to transfer such special fund to the township fund, upon the order of the advisory board of such township.

It shall then be lawful to use such fund for township expenditures.

**SPECIAL TAX TO PAY DEBTS.**

(Acts 1873, p. 209. Sec. 6445.)

**84. Declaration of majority of voters of township.** In all cases where there have been debts contracted by the township for the construction, repairing or completion of schoolhouses, or for furnishing same, and the special levy of taxes shall be insufficient to liquidate the debts so contracted by the trustee, it shall be lawful to levy an additional tax not to exceed 25 cents on \$100, on the taxable property of the township, in any one year, and for each and every year until said debts, so made and contracted as aforesaid shall be fully paid, satisfied and liquidated.

This additional levy shall only be made after the legal voters of the township shall have declared in favor thereof.

**Note:** No provision is made to obtain the necessary declaration of the legal voters. It is doubtful whether a levy made under this section could be enforced.—Editor.

**CASH BOOK—DAILY BALANCES.**

(Acts 1907, p. 391, Sec. 7522.)

**85. Cash book—Must show daily balances.** Every public officer who receives or disburses public funds must keep a cash book in which there shall be entered daily, by item, all receipts and disbursements of public funds, which cash book shall be daily balanced, showing funds on hand at the close of the day. Such book shall be a public record and open to public inspection.

**TOWNSHIP BOARD OF FINANCE.**

(Acts 1907, p. 391, Sec. 7530.)

**86. Who composes the township Board of Finance—Powers.** The advisory board of each township is the board of finance for the township, for both civil and school funds, and has advisory supervision for the safe keeping and deposit of all public money belonging thereto.

(Acts 1907, p. 391, Sec. 7531.)

**87. Requirements of trustee—Reports to Secretary.** Township trustees who receive or have on hand public funds subject to deposit, shall deposit the same in the depository selected by the board of finance, and shall file with the secretary of such finance board a verified statement of the funds deposited.

(Acts 1909, p. 182, Sec. 7532.)

**88. Qualifications of a designated depository—Securities.** No public funds shall be deposited in any bank, bank institution or trust company in this state unless such institution is subject by law to visitation and examination by the comptroller of currency of the United States through national bank examiners, or by the auditor of state through state examiners, and until such depository has presented to said board of finance a personal bond executed by not less than seven freeholders of the State as security for a sum equal to 60 per cent. of the maximum amount of funds to be held on deposit at any one time; or a surety company bond equal to 50 per cent of such deposit, to be approved by such board of finance.

(Acts 1909, p. 182, Sec. 7533.)

**89. Kinds of securities required.** Other form of securities for public depositories may be allowed in the way of any county bonds issued for the improvement of roads, other county bonds, bonds of the State or of the United States, being delivered to the board of finance for the full face value equal to one-half of the maximum amount to be deposited with such depository. Such boards shall determine the value and validity of such securities before accepting same.

A depository is allowed to deposit a portion of such bonds and make up the remainder of surety required by personal bond or a surety company bond.

(Acts 1909, p. 437, Sec. 7535.)

**90. How proposals shall be invited.** The Secretary of the Board of Finance is required to send by registered mail to each bank or trust company eligible to become depositories for the township, written invitations to submit proposals to receive public funds on deposit. Such invitation shall be sent 20 days prior to the meeting of the Board. This mailed notice is in lieu of the published notice as required by Sec. 14 of the Act of 1907. Special meetings of the Board of Finance may be held when necessary. The Board shall meet on the first Monday in January, biennially on odd years, and designate public depositories. See Sec. 7538, Burns' R. S.

#### PROPOSAL FOR FUNDS—INTEREST.

(Acts 1909, p. 438, Sec. 7536.)

**91. Rates of interest to be paid by depository.** Any eligible bank or trust company desiring such deposits shall file with the board of finance, on the day so fixed, its written proposal to receive a maximum sum of the public funds on deposit; agreeing to pay a rate of interest as follows:

2 per cent per annum on daily balances;

2½ per cent per annum on semi-annual time deposits;

3 per cent per annum on annual time deposits.

They are required to file the necessary bond, or securities, within five days after notice of the award.

All interest earned on such public deposits of the township trustee shall be applied to the tuition fund of such township.

**MONTHLY STATEMENT—CHECKS.**

(Acts 1907, p. 391, Sec. 7541.)

92. All checks must be officially signed by trustee. Section 20 of the public depository act requires that the interest on the public deposits shall be credited monthly by such depository, and a statement thereof be transmitted to the officer on the first day of the month for such preceding month.

All checks drawn on such depository shall be signed by the officer in his official capacity.

**MORE THAN ONE DEPOSITORY—MAXIMUM TRANSFER.**

(Acts 1913, p. 279, Sec. 7542.)

93. When more than one depository. More than one depository may be awarded deposits by the board of finance, but the award shall not exceed \$500,000 in any single depository.

In case there is no bank or trust company within the township which shall receive such deposits of funds on the required terms, then the funds may be deposited in one or more qualifying banks of the county which are most convenient, but there shall be no discrimination as between banks of equal convenience outside of the township. The trustee is required to deposit and maintain the balance in each depository as nearly as practicable in proportion to the maximum sum awarded to such depositories.

If any depository shall desire to relinquish its deposit; or if a designated bank shall increase its capital stock after its award, and shall file bonds or securities for additional deposits proportionate to such increase of capital, then the board of finance has the power and authority to readjust the awards, and to order the trustee to make proper transfer of funds.

**TIME OF MAKING DEPOSITS.**

(Acts 1911, p. 616, Sec. 7545.)

94a. Time when deposits shall be made. The funds collected or received by a township trustee must be deposited in a public depository, provided therefor, on or before the 1st and 15th days of each month.

No township trustee shall draw any check upon any such depository except in payment of a legal claim against his township, or school township.

**FAILURE TO MAKE DEPOSIT—ILLEGAL DRAWING OF CHECK—PENALTY.**

(Section 7545.)

94b. Failure to make deposit—Illegal drawing of check—Penalty. If any trustee fails to deposit the public funds coming into his hands in accordance with the statute, or draws any check contrary to the provisions of the statute, he is deemed guilty of embezzlement; and



on conviction is subject to a penalty of imprisonment in the state prison from one to twenty years and a fine not exceeding \$1,000, to which penalty is added removal from office and liability on his official bond for any loss or damage which may accrue.

#### **DEPOSIT EXEMPTS TRUSTEE FROM LIABILITY.**

(Acts 1907, p. 391, Sec. 7546.)

**95. Trustee's exemption from liability.** When public funds have been deposited as provided under the provisions of this law, the trustee and his bondsmen are exempted from liability by reason of the loss of such funds from failure, bankruptcy or any other act of the depository to the extent of the funds in the hands of such depository at the time of such failure or bankruptcy.

#### **TRUSTEE'S ACCOUNTS—INSPECTION OF.**

(Acts 1865, p. 3, Sec. 6429.)

**96. Books subject to inspection, when and by whom.** The books, papers and accounts of any trustee, relative to schools, shall at all times be subject to the inspection of the county superintendent, the county auditor, and the board of county commissioners of the proper county.

#### **EXAMINATION OF TRUSTEE AND HIS BOOKS.**

(Acts 1865, p. 3, Sec. 6430.)

**97. Must produce books, on three days' notice.** For the purpose of such inspection, such county superintendent, auditor, and board of county commissioners may, by subpoena, summon before them any trustee, and require the production of such books, papers and accounts; three days' notice of the time to appear and produce them being given.

#### **CORRECTION OF ACCOUNTS.**

(Acts 1865, p. 3, Sec. 6431.)

**98. Books may be corrected—Removal for fraud.** If any such books and accounts have been imperfectly kept, said board of commissioners may correct them, and, if fraud appear, shall remove the person guilty thereof.

#### **COLLECTION OF TAXES—WHEN PAID TO TRUSTEE.**

(Acts 1859, p. 220, Sec. 9576.)

**99. Semi-annual payment of taxes collected—Road tax—In June.** All township taxes are collected by the county treasurer as other taxes are collected, except the road tax, which is all paid at the first (May) installment, and distributed to the trustee by the treasurer after his June settlement with the auditor. All other taxes than the road tax are paid to the trustee by the county treasurer after each semi-annual settlement with the auditor.

# **PAYMENT OF SURPLUS OF SPECIAL TAXES.**

(Acts 1897, p. 271, Sec. 9577.)

**100. When to be applied to the township fund.** Unexpended balances of special taxes to purchase gravel roads, or to aid railroads must be paid back to township trustees by the county treasurer and are applied to the township fund.

**Note:** This does not apply to surplus from gravel road construction funds. See Section 7729a Burns' R. S.; Section 101 of this book.

(Acts 1913, p. 941, Sec. 7729a.)

**101. How surplus free gravel road tax may be used.** However, in case there exists an insufficient amount to liquidate the indebtedness of any free gravel road in any township, under the provisions of an act 1913, p. 941, a surplus arising from another road constructed in the township, shall be transferred, by orders of the county commissioners, to a "General gravel road by taxation fund" and applied in payment of the insufficient roads account.

**Note:** See Section 100, this book, for disposition of surplus from gravel road purchase funds.

## **RECORDS AND BOOKS.**

(Acts 1859, p. 220, Sec. 9579.)

**102. Open at all times for public inspection.** The records and other books of the township trustee shall always be open for public inspection.

(Acts 1909, p. 141, Sec. 7546i.)

**103. State board of accounts examination of trustee's accounts.** His books are subject to examination by the state board of accounts.

(Acts 1913, p. 154, Sec. 1347.)

**104. Publication in newspapers—When may publish in independent newspaper.** When trustees are required by law to publish notices and reports in a public newspaper, they are required to publish the same in two newspapers published in their respective counties, representing two political parties casting votes in such counties at the last preceding general election, one of which shall represent the party casting the highest number of votes at said election, if there be such newspapers published in the county. If there are not two papers representing such parties published in the county, then such notices or reports shall be published in an independent newspaper.

(Acts 1913, p. 761, Sec. 1346a.)

**104a. May publish in daily or weekly newspaper.** Act of 1913, provides that any legal notice, in township business, theretofore required to be published in a weekly newspaper, may thereafter be published in either a daily or weekly newspaper.

**SUITS AGAINST TOWNSHIP.**

(Acts 1859, p. 220, Sec. 9580.)

**105. When trustees may employ an attorney—Litigation.** In all suits against the township, process shall be served by copy on the township trustee, at least 10 days before the return day of such process.

The trustee is empowered to employ an attorney to defend any suit or proceeding in which the township may be interested.

**TOWNSHIP BUSINESS—FUNDING OR REFUNDING BONDS.**

(Acts 1911, p. 190, Sec. 9585.)

**106. Township business—Funding or refunding bonds—Tax levy—Sinking fund.** Any township in the State being indebted, or hereafter becoming indebted, and whose indebtedness if [is] or shall be, evidenced by bonds, notes or other obligations heretofore, or hereafter, issued, or negotiated by such township, may for the purpose of funding or refunding such indebtedness, or any part thereof, reducing the rate of interest thereon, extending the time of payment and cancelling so much thereof as may be due or shall hereafter become due, by the vote of two-thirds of the members of the township advisory board, and with the approval of the township trustee, issue its bonds, with interest coupons attached, for an amount not exceeding in aggregate the whole amount of the indebtedness of such township; which bonds may be of any denomination not less than fifty nor more than one thousand dollars and shall be payable at any place named therein and at any time not later than thirty years from the date thereof, and shall bear any rate of interest not exceeding four and one-half per cent. per annum, payable annually or semi-annually, and be sold at not less than par value. The township advisory board and the township trustee of such township shall add, or cause to be added, to the tax duplicate of such township a levy sufficient to pay the yearly interest on such bonds and also not less than five cents on the hundred dollars tax valuation to provide a sinking fund for the liquidation of the principal when it shall become due; which sinking fund, together with the interest increase or profit thereon, shall be applied solely to the payment of such bonds.

**SYSTEM OF ACCOUNTING AND REPORTING.**

(Acts 1909, p. 150.)

**107. Trustee required to use forms prescribed by state board of accounts.** It is the duty of the trustee, under the provisions of act 1909, creating the state board of accounts, to use all books, forms, records and systems of accounting and reporting prescribed by the state board of accounts for uniform use in all the townships of the State.

If he shall fail to do so he becomes subject to a fine of not less than \$100, and removal from office.

**PUBLIC ADVERTISING.**

(Acts 1879, p. 130, Sec. 9604.)

**108. Legal rates of advertising—How set up.** The act 1879, fixes the printer's advertising rates for all public advertising at \$1 per square of 250 ems for the first insertion; 50 cents for each additional insertion.

Such advertisement shall be set up in solid reading type as the newspaper is printed, without leads, and without more than two display lines to each, which display lines are to occupy no more space than four lines of regular reading matter.

In case the trustee can not procure such rates, the act provides that written or printed notices duly posted shall be sufficient, without newspaper publication.

**INTOXICATING LIQUORS—"PROCTOR LAW."**

(Acts 1911, p. 262, Sec. 8323bl.)

**109. When Township receives part of liquor license fee.** Sec. 23 provides for amount of the liquor license fee, regulating the fee of \$200 in retail licenses to be paid to the credit of the tuition fund of the county.

Additional license fees are required to be paid and graded in amounts on location, viz.:

That if such premises are located within the corporate limits of first and second class cities, or within four miles thereof, an annual fee of \$300;

All other cities, or within two miles of its corporate limits, an annual fee of \$200;

Incorporated towns, or within two miles of its corporate limits, \$150;

If located without the corporate limits of any city or town, and not within the distance above set out, the annual fee of \$50 shall be paid into the township treasury.

**Note:** The act of 1915, at page 20, providing for the return of license fee, does not apply to the fee paid to a township.

**INTOXICATING LIQUORS—LOCAL OPTION.**

(Acts 1911, p. 369, Sec. 8323b.)

**110. How Township pays expenses of election.** Sec. 10 provides for the payment of the expenses of an election held under the local option act, when held in any township or in the territory in any township outside of any incorporated city, or cities, therein, all of which shall be paid by such township.

It becomes the duty, in such case, for the county auditor to file with the township trustee an itemized statement of the expenses of such election, setting forth the names of each person to whom the same are payable and such expenses shall be paid out of the township fund.

**Note:** When such election is held only within an incorporated city, the expenses therefor are paid by such city, and not by the township.



**TOWNSHIP LIBRARIES.**

(Acts 1865, p. 3, Secs. 6647-6653.)

**111. Trustee to provide book cases.** The old law of 1865 makes it the duty of the superintendent of public instruction to superintend the purchase of books for Township Libraries, and distribute such books to the several townships.

The library is placed under the charge of the trustee, who is required to provide bookcases, preserve the books and keep an account to whom loaned. Every family in the township is entitled to the use of two volumes at one time from the library, and it became the duty of the trustee to post notice at commencement of each school term, at each school house, stating where the library is kept and inviting the free use of the books by the persons of the townships.

**Note:** It is believed that the township library law is regarded as obsolete in practically all the counties of the State.

(Acts 1877, p. 122, Sec. 6403.)

**112. County board of education—Care and management.** Under the amendment of the act 1877, establishing a county board of education in each county, it is provided that the care and management of township libraries shall be determined by that board.

**LIBRARY—CITY OR TOWN—TAX.**

(Acts 1909, p. 337, Sec. 4912a.)

**113. Townships may join with incorporated city or town.** Whenever the library board of any incorporated city or town shall file notice, with the advisory board of the township wherein such city or town is situated, of consent to make such library free and open to all the people of said township, or townships, on the condition of such township contributing to the support of such public library; such advisory board shall, upon the petition of 50 resident taxpayers, real estate holders in such township not already taxed for such library, make an annual appropriation and levy not less than 5 cents, nor more than 10, on each \$100 property of the township, excluding the property of such town or city, to be applied to the library fund of such library.

Where the privilege of the use of such library has already been extended free to the people of such township, upon notice to the advisory board by the library board that at least one-tenth of the families of the outside taxpayers in such township, are users of such library, such advisory board shall make the appropriation and levy without the filing of such petition.

Where any township coming under the provisions of the act, owning a township library, and levies a library tax therefor, it shall be discretionary with the advisory board whether or not such tax for such city or town library shall be levied.

Said library shall remain open and free to the people of such township so long as the families of one-tenth of the outside taxpayers are found users of such library.

When such tax is not levied, or is discontinued, the library board

may issue and sell a certificate or library card to such township residents at such annual fee as may be a fair compensation for the privileges extended.

(Acts 1911, p. 330, Sec. 4912b.)

**114. Additional provisions—Powers of advisory board.** This law was re-enacted in 1911, with additional provisions: providing for the extension of the use of the library to any neighboring township in the county; that the advisory board may levy the tax and make the appropriation without the petition; and in the case any township coming under the act owns a township library, it is left to the discretion of the advisory board, whether or not, such tax shall be levied for the city or town library.

#### **TOWNSHIP LIBRARY—TRANSFER OR REVERSION.**

(Acts 1899, p. 228, Sec. 4913-4914.)

**115. When abandoned library books revert to township.** The board of commissioners are authorized, by proper order entered on its records, to abolish a township library and require its property to be turned over and transferred to the trustees or managing officers of any library which may have been established by donation to the value of \$1,000 in the township, and in case of abandonment of such library, the books, papers and paraphernalia shall revert to such township.

#### **TOWNSHIP LIBRARY—MANAGERS.**

(Acts 1901, p. 187, Sec. 4908.)

**116. Trustee an ex-officio member of board.** In townships where a donation library has been established, as provided in Section 117 herein, the trustee shall be ex-officio one of the trustees, directors or other managing officers of such library.

#### **TOWNSHIP DONATION LIBRARIES (\$1,000).**

(Acts 1901, p. 187, Sec. 4907.)

**117. When \$1,000 donation is made—Tax levy.** In townships where there may be established a library by private donation, to the value of \$1,000 or more, which is for the use and benefit of all the inhabitants, including the inhabitants residing in municipal corporations in the township, the township advisory board shall annually levy a tax of not less than one, nor more than six cents on the \$100 upon the total taxables of the township and such municipal corporations, to be applied to the purchase of books for such library.

For enlargement of the library the advisory board shall levy not more than five cents on the \$100, for three consecutive years for such purpose.

#### **TOWNSHIP DONATION LIBRARY (\$25,000 value).**

(Acts 1895, p. 240, Sec. 4606.)

**118. Duty of trustee when \$25,000 donation is made.** In any township where there have been private donations made and a library of

the value of \$25,000 has been established for the use and benefit of the inhabitants of such township, the township trustee of such township shall annually levy and collect a tax not more than six cents on the \$100, with the consent of the board of county commissioners, to be applied to the purchase of books for such library.

When necessary to purchase additional ground or for the protection of library buildings already established by such donation, the trustee may levy a tax of 5 cents on the \$100 of taxables for such purpose, for not more than three years.

**Note:** It is believed that the advisory board, and not the trustee, should make the levy for the tax.—Editor.

#### **TOWNSHIP DONATION LIBRARY (\$1,000 value).**

(Acts 1886, p. 5, Sec. 4905.)

**119. Duty of trustee when \$1,000 donation is made.** In any township where there have been private donations made and a library of the value of \$1,000 has been established for the use and benefit of the inhabitants of such township, the township trustee of such township shall make an annual levy of not more than one cent on the \$100 of taxable property, with the consent of the board of commissioners, to be applied to the purchase of books for such library.

When it becomes necessary to erect or enlarge a library building, the trustee may levy an annual tax not more than 5 cents on the \$100, for not more than three years to erect or enlarge such library.

**Note:** It is believed that the advisory board, and not the trustee, should make the levy for the tax.—Editor.

#### **LIBRARY—TOWNSHIP TAX.**

(Acts 1911, p. 73, Sec. 6660.)

**120. Election for a library tax for library.** The advisory board of any township desiring to establish and maintain a public library open to and for the free use of all the inhabitants thereof, may levy a tax annually of not more than one mill on each dollar of taxable property assessed for taxation in such township. If the advisory board do not make such levy, then, on the written petition of fifty legal voters of any township filed with the county clerk not less than fifteen days prior to a township election, the county board of election commissioners shall cause to be printed on the township ballots for such township the words: "For a township library tax." "Yes." "No." If in the election a majority of the votes cast on said question shall be in the affirmative, the township trustee shall thereafter levy annually a tax of not less than five-tenths of a mill nor more than one mill on each dollar of the property taxable in said township for the establishment and support of a township library free to all inhabitants of such township, which tax shall be levied, assessed, collected and paid as other township taxes are levied, assessed, collected and paid: Provided, That after such library has been established such tax levy shall be discontinued when, under the above provision, the question of discon-

tinuing such levy shall have been submitted to a vote and the majority of the votes cast on said question shall be in the negative: Provided further, That if there be located in said township a public library open to the use of all the inhabitants thereof, then the proceeds of said tax shall be paid to said public library. Be it further enacted, that in any township outside of cities in which there has been or may hereafter be established by private donations a library of the value of ten thousand dollars or more, including the real estate and buildings used for such library for the use and benefit of all the inhabitants thereof, the township trustee of such township shall annually levy and collect not more than six cents on the hundred dollars, upon the taxable property within the limits of such township, which shall be paid to the trustees of such library, and be applied by them to the purchase of books for said library and to the cost of the maintenance thereof, and said trustee may, with the consent of the board of commissioners of the county, when it shall become necessary to purchase additional ground for the extension or protection of library buildings already established by such private donation, annually levy and collect not more than five cents on the hundred dollars upon all taxable property of said township for not more than three years successively, which shall be expended by said trustees in the purchase of said property and the erection and enlargement of library building thereon.

#### LIBRARY BOARD—TOWNSHIPS UNITING.

(Acts 1911, p. 73, Sec. 6661.)

**121. Township library board—Townships uniting.** In any township where a free public library is established as above provided, there shall be established a township library board composed of the school township trustee and two residents of the township, to be appointed by the judge of the circuit court (one of whom shall be a woman). Of the first two members of such board so appointed one shall be appointed for a term of two years and one for four years, and thereafter the term of office shall be four years. Such library board shall have control of the purchase of books and the management of such library, and shall serve without compensation. Said library shall be the property of the school township, and the school township trustee shall be responsible for the safe preservation of the same. Said board shall be entitled to the possession and custody of any books remaining in the old township library in such township and such board shall be empowered to receive donations, bequests and legacies for and on behalf of such library, and shall be entitled to receive from the public library commission and state librarian copies of all documents of this state available for distribution. Two or more adjacent townships may unite to establish and maintain a public library at the discretion of the advisory boards, and when two or more townships have so united, the combined library boards, appointed as herein specified or the board of the public library to which such money is paid as herein provided, shall control the library so established.



**PUBLIC BUILDINGS — CONTRACTORS AND SUB-CONTRACTORS.**

(Acts 1911, p. 437, Sec. 590a-b.)

**122. Complete settlement for public building to be withheld—Contractors—Sub-contractors—Laborers—Disputes.** Under supplemental act 1911, public officers who are empowered to let contracts for any public buildings of State, county or township, or the repair thereof, are required to withhold full payment to the contractor until he has paid to the sub-contractor or laborers employed in such contract all bills due and owing the same, provided there is a sufficient amount owing the contractor to pay all such bills and if there is not such, unpaid bills shall be pro rated.

Such sub-contractor and laborers are required to file their claims with the trustee within thirty days from the completion of the public work. Where no dispute arises between the contractor and the sub-contractor or the laborer, the trustee shall pay, as above, take receipts therefor and deduct the sums so paid from amount due the contractor. In case a dispute arises between them, sufficient funds shall be retained by the trustee to satisfy such claims, until such disputes are settled and the correct amount determined, when the trustee shall pay as aforesaid.

All contracts for any public building, improvement or repairs, shall make provision for such withholding by the trustee of funds sufficient to pay for labor, material and sub-contractors, and the bond required and given by such contractor shall be so conditioned, provided, however that laborers, material-men and sub-contractors shall file such unpaid claims with the trustee within thirty days after the labor is performed or the material furnished.

**REMOVAL OF COUNTY SEATS.**

(Acts 1895, p. 217, Sec. 5869.)

**123. Special act 1895—Counties exceeding 500 square miles—Bonds of township.** Under one of the acts for removal of county seat, see Acts 1895, p. 217, in counties containing an area of over 500 square miles, it is provided, that the trustee of the township to which the county seat is to be removed shall annually levy a special tax, to be known as "the court house and jail tax," for the purpose of paying for those county buildings by such township.

(Acts 1895, p. 217, Sec. 5886.)

**124. Tax levies for payment of these bonds.** This act also provides for the issuance of bonds to anticipate the tax levies. Such bonds shall bear a rate of interest not exceeding six per cent., and shall not be sold for less than par.

The act gives form of this bond and relates the process of sale of them.

The township bears all the expenses of the removal.

**BURIAL OF EX-UNION SOLDIERS.**

(Acts 1907, p. 330, Sec. 9774.)

**125. Duty of the Trustee as to burial of ex-union soldiers or their widows.** It is the duty of the Trustee to look after and cause to be buried by the undertaker designated by the family, if any, or the nearest relatives of the deceased, in a decent and respectable manner, in any cemetery or burial ground in the State, other than those used exclusively for the pauper dead, at an expense not to exceed \$50, the body of any honorably discharged soldier, sailor or marine who may have, at any time, served as a regular or volunteer soldier, sailor or marine in the army or navy of the United States, or the body of the wife or widow of such soldier, sailor or marine, who shall have died a resident of this State, not leaving means sufficient to defray the necessary funeral expenses, or whose immediate family is in such indigent circumstances that its members would be distressed by the expense of such burial.

When such Trustee finds a necessity therefor, he shall in addition to such burial, purchase a burial place for such soldier, sailor or marine in the most accessible cemetery.

**Note:** Relative to this matter, see *Gardner v. Board*, 161 Ind. 149, and *Shirfey v. Board*, 26 Ind. App. 66.

**Note:** The act of 1915, at page 12, provides for the burial of any honorably discharged soldier, sailor or marine, regular or volunteer, or the wife or widow of such; and for the allowance, by the board of commissioners, of the claim of any interested person for an amount not exceeding \$50.00.

It also provides for the purchase of a burial place for such, not to exceed a cost of \$25.00, all to be paid from the county fund.

**Note:** It is believed that the act of 1915 repeals Sections 9774 and 9775, Burns' R. S., Sections 125 and 126 this book, and that the Trustee is now relieved of the duty of burying soldiers and sailors except as far as such duties may be enjoined by the poor laws.—The Editor.

**RECORD OF BURIALS.**

(Section 9775.)

**126. Duty of Trustee to report to board—Allowance—Record.** The record of such burials shall not be kept in the pauper books of the township; but such burials shall be promptly reported by the Trustee to the county commissioners, and shall be allowed and paid out of the county treasury as other legal charges are allowed and paid.

**Note:** See notes above.

**SOLDIERS' MONUMENT.**

(Acts 1911, p. 335, Sec. 9589e.)

**127. Law 1913, as to erection of soldiers' monument—Petition.** Under the provisions of act 1913, upon the petition of a majority of the voters, based on the votes cast at last preceding election for secretary of state, township Trustees are authorized and empowered to appro-

priate from the funds of the township a specific sum for the purpose of the erection of a suitable monument within such township, in commemoration of the soldiers who fought and died in the war of the rebellion, and in defense of the United States, such sum not to exceed the sum which may have been donated to the township for that purpose.

The township advisory board is authorized under the act to make the proper tax levy for such purpose.

### ENUMERATION OF VOTERS—SEXENNIAL.

(Acts 1865, p. 41, Secs. 7132, 7150, 7151-7154.)

**128. How shall be made—White and colored voters, separately.** Under the provisions of act 1865, S. p. 41, at the end of each successive period of six years after the year 1871, it becomes the duty of the township Trustee to take the enumeration of all white male inhabitants over the age of twenty-one years. Under the subsequent act of 1877, at p. 59, the enumeration of all colored male inhabitants is required to be made at the same time, to be kept in a list to be designated as "colored male inhabitants" and to be kept separate from the list of "white male inhabitants."

The work of taking the enumeration of his township may be performed by the Trustee, or by one or more assistants appointed by him, who are required, before entering on such duties, to subscribe to an oath to be filed and kept by the trustee, for the honest and faithful performance of their duties.

This enumeration must be made between the first days of January and July of such sexennial year.

The report must contain the names of all persons, as above mentioned, arranged in alphabetical order, showing opposite the name of each person, his age as nearly as the same could be ascertained.

The returns shall contain the certificate of the Trustee under oath that all persons named therein are 21 years of age, and that no person was knowingly or negligently omitted from the list. Assistant enumerators are subject to removal at any time by the trustee.

The lists so taken shall be promptly transmitted to the county auditor, and any errors or omissions may be corrected by the Trustee before such delivery.

Compensation for such services is the same as for taking the enumeration of school children, and is paid out of the county treasury.

Any enumerator who shall fail to perform his duty is deemed guilty of official negligence, and is subject to a fine of from \$50 to \$500. Thirty days imprisonment in jail may be added.

Any enumerator who shall be guilty of any fraudulent act or omission in relation to his duties, is deemed guilty of official fraud and is subject to a fine of from \$100 to \$1,000. Six months' imprisonment in jail may be added.

Any enumerator who shall willfully and corruptly suppress the truth, or make any false statement in regard to his return under his oath shall be deemed guilty of perjury, and upon conviction thereof shall be punished as is prescribed for that offense.

**DRIFTS AND OBSTRUCTIONS—CLEARING OF.**

(Acts 1913, p. 945, Sec. 10139a.)

**129. Abutting owners to clean.** The act of 1913 regulating the clearing of obstructions of any small stream of water, not navigable and not exceeding ninety feet in width, between banks, requires that abutting owners shall clean out all drifts and obstructions from the channel, as to leave the same free and open for the free flow of water therein. This is required to be done in equal proportions by such owners.

When the obstruction affects the lands of other owners which do not abut such stream, the township trustee after notice by not less than two interested parties shall appoint three disinterested parties to view such land and determine upon the equitable amount each land-owner affected should pay or work out in the removal of such obstructions, according to the benefits derived.

If any person fails to pay such equitable amount so determined, or work out the amount thereof, the Trustee shall cause the same to be worked out under his direction in removing such obstruction, and the cost thereof shall be placed upon the tax duplicate, and the same shall be collected as other taxes.

Any aggrieved person may appeal to the circuit court of his county.

It is provided, if any township property or roads are affected by such obstruction, one-half of the cost of removing such obstruction shall be paid by the township and the remainder by the owners affected.

**Note:** It is doubtful whether the provision that the Trustee may remove obstructions and make the cost thereof a lien upon the land of non-abutting owners is valid, because no provision is made for giving notice to such owners. No doubt a decision from the courts will be necessary to determine the meaning of the last sentence of the act.—Editor.

**DOG TAX.**

(Acts 1897, p. 178, Sec. 3258-3259.)

**130. Collected by township assessor—Payment to Trustee.** The tax is collected by the township assessor, who, within five days after the completion of the township assessment, must turn over to the Trustee all money received by him as dog tax and all records relating to its collection and a copy of all receipts issued to persons paying such tax. Unpaid dog taxes must be paid to the trustee after the assessor completes his assessment.

(Acts 1892, p. 178, Sec. 3262.)

**131. Delinquent dog owners reported to Trustee—Prosecuting attorney.** The township assessor is required to report all delinquent dog owners to the Trustee, at the time of making his other report. It becomes the duty of the Trustee to report the same to the prosecuting attorney, who shall bring action against such persons. If any person shall acquire, own, harbor or keep a dog after the assessor shall have completed his assessment, such owner shall report to and pay the prop-



er tax to the Trustee, whose receipt will exempt the owner from further payment until the next assessment.

(Acts 1879, p. 178, Sec. 3268.)

**132. Purposes of the fund.** The money derived from taxing dogs shall be used for the payment of damages sustained by owners of sheep, cattle, horses, swine and other live stock, or fowls killed, maimed or damaged by dogs within the township.

(Acts 1897, p. 178, Sec. 3269.)

**133. Claims for damages—Appraisalment.** The owners of sheep, cattle, swine, horses, and other live stock or fowls killed, maimed or damaged by dogs, shall within ten days from the time thereof, report to the Trustee of his township under oath in which he shall state the number and age as he believes, and the value of such stock or fowls so killed or damaged, and the damages sustained on account of such stock or fowls killed or maimed, in which affidavit he must be joined by two disinterested and reputable freeholders, or householders, and any person or persons who shall make any false statements of such damages, shall upon conviction be fined in any sum, not exceeding one hundred dollars to which shall be added imprisonment in the county jail, for any term not exceeding thirty days: Provided, however, That no appraisalment shall exceed the actual cash value for which such live stock or fowls would have sold for if placed on the market at the time such damage was sustained: Provided, further, That if any township Trustee deems the appraisalment of such live stock or fowls so killed or maimed to be excessive he shall tender to the owner or owners, or credit upon his books such amount which in his judgment is equal to the injuries sustained, and if in any action at law by the owners thereof for the recovery of such damages, said owner shall fail to recover a judgment exclusive of costs for an amount greater than the amount so tendered the defendant shall recover costs of such suit.

**Note:** The claim must be filed with the Trustee within ten days from the date when the dog bites, or injures, the animal, and not ten days from the date of the death of the animal.

(Acts 1897, p. 178, Sec. 3270.)

**134. Trustee's registry of claims—Surplus over \$100.** The Trustee shall register all losses in the order in which they are reported: Provided, That no person shall receive pay for sheep, horses, cattle, swine or other live stock or fowls killed or maimed by any dog or dogs owned or harbored by himself: Provided, further, That the dog fund heretofore collected shall be added to and applied with the fund arising under the provisions of this act. And when it shall so occur on the first Monday of March of any year in any township in the State of Indiana that said fund shall accumulate to an amount exceeding one hundred dollars over and above orders drawn on the same, the surplus aforesaid shall be paid and transferred to the county treasurer of the county in which such township is located and the fund arising from such surplus from the township of the county shall constitute a county dog fund and shall be distributed among the townships of the county

in which the orders drawn against the dog fund exceed the money on hand. This distribution shall be made on the second Monday in March of each year, and if said county dog fund be insufficient to pay for all the live stock or fowls maimed or killed by dogs of all the townships the distribution shall be made in the ratio of the orders drawn against the dog fund of the township and unpaid and unprovided for, which ratio shall be obtained from the report of the Trustees of the townships made to the auditor of the county which it is hereby directed shall be made by each township Trustee of the county upon the first Monday of March of each year, which report shall show all receipts into the dog fund of his township, and all orders drawn against the same in the order in which they were drawn. And when it shall occur upon the second Monday in March of any year that there is a surplus left of the county dog fund after provisions have been made for the payment for all the live stock or fowls killed or maimed, of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner the common school revenue of such county is distributed.

#### HYDROPHOBIA FUND—COUNTY AUDITOR.

(Acts 1911, p. 161, Sec. 7604.)

**135. Five per cent. of surplus dog tax.** The county auditor shall annually on the first of April of each year pay to the state auditor five per cent. of the surplus dog tax collected from the townships of the county. The amount received from all county auditors shall constitute a state hydrophobia fund in the state treasury.

The surplus exceeding \$3,000 at end of fiscal year shall be turned into the school fund of the State.

#### PUBLIC AID TO RAILROADS.

(Acts 1903, p. 233, Sec. 5465.)

**136. Extension of aid to railroads applies to interurbans.** Under the provisions of act 1903, all acts providing for public aid, by donations or stock, to railroads were extended to street railroads, suburban or interurban roads.

(Acts 1889, p. 82, Sec. 5464.)

**137. Procedure before board to give aid to railroads.** Upon the petition of 25 freeholders of any township to the board of county commissioners asking that such township shall give public aid to a railroad, by donation or by subscription to stock, if the board shall find the purpose of the petition to be of public utility, shall order an election, not less than 30 nor more than 60 days therefrom, to determine the majority wish of the legal voters of the township.

(Acts 1869, p. 92, Sec. 5476.)

**138. Election as public aid to railroads.** Upon a majority vote cast in favor of the appropriation, the board shall grant the prayer of the petition and levy a special tax, not exceeding one per centum of the taxables for any one year.

(Acts 1875, S. p. 70, Sec. 5477.)

**139. Limitation of such public aid by township.** The limit of aid to such railroad shall not exceed two per centum of the total taxables appearing on the tax duplicate, in any one period of two years.

(Acts 1879, p. 46, Sec. 5489.)

**140. Township not liable for labor or material claims.** Any township which shall become the owner or holder of stock in any railway shall be not liable for any debt or claim for work, labor or material incurred in building such road, after the assets of the company shall be exhausted.

(Acts 1872, S. p. 54, Sec. 5500.)

**141. When aid is taken in stock, Trustee to vote shares.** Township Trustees shall have the right to vote the stock held by their township in all meetings of stockholders of the railroad companies by which such stock was issued.

#### SALE OF TOWNSHIP PROPERTY—NOTICE.

(Acts 1915, p. 91, amending Sec. 9567.)

**142. Can only be sold at public auction—Thirty days' notice.** No township Trustee shall sell any real or personal property of such township except at public auction after notice for thirty (30) days prior to the day of sale, by posting notices thereof at six (6) public places in said township of the time, terms and place of said sale, giving a description of the property to be sold: Provided, That any gravel or other road material belonging to such township may be sold by the Trustee of such township with the approval of the advisory board without giving notice and without offering such gravel or other road material for sale at public auction. All money derived from the sale of such gravel or other road material shall be carried into the township treasury and shall constitute a part of the township road fund and shall be disbursed as the other moneys belonging to such fund are disbursed.

(Acts 1915, p. 135.)

**142a. Transfer of property by civil townships.** Any building or other property belonging to any civil township in this state may be conveyed to the corresponding school township in the manner prescribed in this act.

In order to effect the transfer or conveyance of any building or other property from any civil township to the corresponding school township, a petition may be filed with the board of commissioners of the county in which such civil township is situated, asking for the conveyance or transfer of such building, or other property, the nature of the building or other property to be conveyed or transferred, and the reasons for desiring to effect such conveyance or transfer. The petition shall be signed by a majority of the legal voters resident within such civil township and shall be filed in the office of the county auditor. At the time of filing such petition the petitioners shall give a bond

with good and sufficient freehold sureties, payable to the state, to be approved by the board of commissioners, conditioned to pay all expenses in the event the board of commissioners shall fail to authorize the proposed conveyance or transfer. Immediately after such petition shall have been filed the county auditor shall give notice of the filing of such petition by causing publication: to be made once a week for two (2) consecutive weeks in one newspaper printed and published in the county and of general circulation in the county in which such civil township is situated. The board of commissioners shall hear the petition at their next regular term, and on the day designated in the notice and shall determine all matters pertaining thereto, and if such board shall be satisfied as to the propriety of granting the prayer of the petitioners, they shall so find, and thereupon the Trustee of such civil township shall convey such building or other property belonging to such civil township to such corresponding school township and such school township shall thereafter hold, control and manage such building or other property. All expenses incurred in the conveyance of such property if such conveyance be authorized, shall be paid out of the general funds of such civil township.

#### SCHOOL LANDS—CUSTODY AND CARE.

(Acts 1873, p. 79, Sec. 6186-6188.)

**143. Congressional school lands—Who shall manage—Leases—Reports.** The custody and care of school lands belonging to the congressional school fund shall be with the Township Trustee of the civil township wherein contained. He is required to report annually to the county auditor, by the fourth Monday in March, the annual income derived therefrom. This report must embrace all particulars as to rents, collections, amounts uncollected and reason therefor.

Upon a majority vote of resident voters of such congressional township, the Trustee has power to lease such lands, for money, property or improvements, for a time not exceeding seven years.

When such school section shall be divided by a county or civil township line, or where the substituted section lies within any other county, the voters of the congressional township shall designate, by a vote, or by the written direction of a majority thereof, the Trustee of a civil township, which includes a part of such section, to have the care and custody of said section, and carry out the directions of the voters of the township, thereto.

Such Trustee shall have same powers and duties as if the whole of such section was within his civil township.

#### SCHOOL LANDS—POWER OF TRUSTEE.

(Act 1865, p. 3, Sec. 6196.)

**144. Powers of a landlord given Trustee.** The Trustee shall have all the rights and powers of a landlord, in his official name, in coercing fulfillments of contracts relating to school lands, and preventing waste or damage, or for recovery of the same when committed.



**SCHOOL LANDS—SALE OF.**

(Acts 1865, p. 3, Sec. 6197.)

**145. Procedure to sell.** At any time when five voters of the congressional township shall by petition to the Trustee having charge of such school land, belonging thereto, set forth their desire for the sale of the part or whole thereof, the Trustee shall give public notice in five public places in said township, of the time and place in such township when and where a balloting will be had to determine whether said school land shall be sold as petitioned, or not.

Twenty days' notice of such meeting is required.

**SCHOOL LAND—PROCEDURE OF SALE.**

(Acts 1865, p. 3, Sec. 6198.)

**146. Record of all proceedings required.** All proceedings relating to such petition and the action of the Trustee therein shall be made a matter of record.

**SCHOOL LAND.**

(Acts 1865, p. 3, Sec. 6201-6202.)

**147. Election to sell—Report to county auditor.** Full details concerning such election, its record and trustee's duty in reporting results to the county auditor is given at length in the act.

**COUNTY SUPERINTENDENT—ELECTION.**

(Acts 1911, p. 28.)

**148. Extension of term, act 1911.** Under the provisions of the amended act of 1911, the Township Trustees were required to meet at the office of the county auditor on the first Monday in June, 1911, and every four years thereafter, and elect by ballot a county superintendent for such county.

(Acts 1913, p. 160, Sec. 6376.)

**149. Election in June, 1917.** This was further amended by act 1913, page 160, which gave an extension of two years to the term of the county superintendent, requiring the Township Trustees to meet first Monday in June 1917, to elect such superintendent.

(Acts 1911, p. 156, Sec. 6376 and 6378.)

**150. Qualifications—How vacancy is filled.** It is required that a person to be eligible as county superintendent and to hold such office must have been actively engaged in school work for a period of not less than two years out of the ten years preceding his election and hold at such time of his election, either three years' state license, a sixty months' license, a life or professional license, granted upon examination as now provided by law.

Whenever a vacancy occurs in such office, upon a three days' notice of the county auditor, the Township Trustees shall assemble at ten o'clock a. m. on such day designated, at the office of the county auditor and fill such vacancy by ballot for the unexpired term.

(Acts 1873, p. 75, Sec. 6402.)

**151. Books open for inspection at all times—Duty of county superintendent.** The dockets, official records and books of accounts of all officers, including the Township Trustee, as to all school matters, shall be open at all times, to the inspection of the county superintendent. The superintendent is required to bring suit in the name of the State for recovery from public officials of all school monies which may have been wrongfully withheld, or misapplied by such officials.

### COUNTY BOARD OF EDUCATION.

(Acts 1877, p. 122, Sec. 6403.)

**152. Who compose this board—Its duties—Meetings.** The county superintendent, the Township Trustees and the chairman of the school boards of each school town and city of the county, shall constitute the county board of education.

Such board shall meet semi-annually on first day (Sunday excepted) in May and September at the office of the county superintendent, which officer shall preside at all meetings.

The board shall consider the general wants and needs of the schools and school property in their charge and all matters relating to the purchase of school paraphernalia.

The management of township libraries shall be determined, and each school township shall conform therewith as nearly as practicable.

No change in a text-book which has been adopted can be made for six years from the time of its adoption, except by unanimous vote of all the members of the board; and in no case for three years from the date of its adoption.

A majority of the members of the board shall constitute a quorum.

(Acts 1915, p. 151, amending Sec. 6678.)

**153. Elects county attendance officer.** It is the duty of this board to meet on the first day of May in each year for the purpose of electing a county attendance officer. Such officer takes his office on the first day of the following August.

This comes up under the compulsory education law, Acts 1913, p. 616, which repealed the "truancy law" of 1901, page 470.

### PUPILS—BENEVOLENT INSTITUTIONS.

(Acts 1865, p. 124, Sec. 3427-3432.)

**154. How pupils are to be admitted to.** Applications for admission to the state benevolent institutions, viz.; for education of the blind; the deaf and dumb, or hospital for the insane, must be accompanied by the certificate of a justice of the peace, that the applicant is a legal resident of the county stated in the application.

When it is deemed necessary by the proper officers of such institution that a pupil should be removed therefrom by reason of ill health; a vacation of such school; a completion of the course of instruction, or

because of disqualification for longer continuance as a pupil; it becomes the duty of the superintendent of the institution to cause such pupil to be delivered to the Trustee of the township, where he resided before coming to the institution; and the expense therefor shall be paid by the county, and the treasurer shall charge the same to the proper township.

#### ORPHANS' HOME—ADMISSION.

(Acts 1893, p. 307, Sec. 3641.)

##### 155. How commitments are made.

**Note:** The act of 1893, page 307, Section 3641 Burns' R. S. provided for the admission to the county orphans' home through the Township Trustee.

It is deemed this has been superseded by a later law, Acts 1907 at page 59, which provides for such admission through the judge of juvenile court.

When a child under the care of the Trustee should be sent to an orphans' home, the Trustee can bring the case to the attention of the judge of the juvenile court, either in term time or in vacation. A child can not be supported in an orphans' home by the county unless it has been made a public ward by the juvenile court (the circuit court in all counties except Marion).

#### THE POOR.

(Acts 1901, p. 323, Sec. 9741).

**156. Overseer of the poor—Duties.** The Township Trustee is ex-officio overseer of the poor within his township, and performs all duties with reference to the poor in such township that may be prescribed by law.

(Acts 1901, p. 323, Sec. 9744.)

**157. Duty towards poor with legal settlement in his township—County asylum.** Every county shall maintain a county asylum for the poor, in addition to other charitable institutions for the poor, and shall support therein such poor and indigent persons, lawfully settled in the county, as may be placed there by the Township Trustee.

The county council shall appropriate and the board of commissioners shall advance to the Township Trustee the money necessary for the relief and burial of the poor in each township, which money shall be accounted for and repaid to the county treasury as will be later explained.

In other words, the county cares for the poor which are inmates of the asylum and the Trustee cares for the resident poor of his township, who have a legal settlement.

(Acts 1901, p. 323, Sec. 9745.)

**158. What constitutes a legal settlement.** A legal settlement in the county or township, so as to obtain relief and support, may be acquired as follows:

1st. The settlement of a married woman shall always follow that of her husband, if he has a settlement in the State, otherwise she re-

tains her own at time of her marriage, which shall not be lost or suspended by such marriage.

In case the husband and wife have resided six months in any county of the State, and he shall afterwards abandon her, and she had a residence at the time, her settlement shall be in such resident township.

2d. Legitimate children follow the settlement of the father, if he has one in the State, until they gain one of their own. If the father has no settlement within the State they then shall have the settlement of the mother, if she has any.

3d. Illegitimate children shall follow the settlement of their mother at the time of their birth, if she had any in the State.

Neither legitimate nor illegitimate children shall gain a settlement by birth where born unless the parent or parents had a settlement therein at the time.

4th. Every male person and unmarried woman over the age of 21 years, resident, without interruption, in any township for one whole year, acquires a settlement.

5th. Every minor whose parent, and every married woman whose husband has no settlement in the State, who shall have resided continuously in any township one whole year, shall thereby gain a settlement therein.

6th. Every minor apprenticed in good faith shall thereby acquire a settlement with the master or mistress.

7th. Every settlement acquired shall last until it is lost or defeated by acquiring a new one in the State, or by willful and uninterrupted absence from the township, for one whole year or upwards, or upon acquiring a new settlement.

(Acts 1901, p. 323, Sec. 9746.)

**159. Relief—Medical and surgical attendance.** The Trustee has the oversight and care of all poor persons in his township so long as they remain in charge, and shall see that they are properly relieved and taken care of in manner required by law.

He must in cases of necessity promptly provide medical and surgical attendance for all poor of the township who are not cared for in public institutions and see that such medicines as are prescribed are promptly furnished.

(Acts 1901, p. 323, Sec. 9747.)

**160. Trustee to make investigation in all cases.** Whenever a claim for relief shall be made upon the Trustee, it becomes his duty to investigate the circumstances of the parties claiming to be poor and in distress.

This embraces their legal settlement, physical condition of sickness or health, present or prior occupation, ability and capacity for labor, their ages and names, and the ability and capacity of all the members of their family; and if they are found in distress, the cause of their condition, if it can be ascertained; and make inquiry, whether or not, such claimants have family relations who are willing to assist them.



(Acts 1901, p. 323, Sec. 9749.)

**161. Shall insist that all able-bodied persons shall work—Seeks employment.** If the poor persons applying are in good health, or if any members of their family are so, the overseer shall insist that those able to labor shall seek employment and he shall refuse to furnish any aid until he is satisfied that the persons claiming help are endeavoring to find work for themselves. The overseer, in such cases, shall make all possible effort to secure employment for the able-bodied in the township where they reside and may call upon residents of the township to aid him in finding work for such persons as are able to labor.

(Acts 1901, p. 323, Sec. 9748.)

**162. When temporary aid shall be given.** In cases of immediate and pressing suffering, the Trustee must furnish such temporary aid as may be necessary, but before further, final or permanent relief can be given the Trustee must determine whether it can be accomplished by other means than an expenditure of township funds.

(Sections 9751-9752.)

**163. Limitation of \$15 in value to any person or family.** Persons who have legal settlement in the township, however, are entitled to any relief that may be necessary. At any time that such relief, outside of school aid, medical aid or burial, amounts to \$15, authority must be had from the county commissioners before more is given. This does not limit aid to \$15 a month, or a quarter, or a year. It simply means that **whenever** that amount has been given, the case must be reported to the county commissioners, for such action as they may decide to take.

(Section 9751.)

**164. Board of commissioners consent for excess over \$15—Procedure.** The Trustee, upon application to the board of commissioners for such further relief, shall present a full statement of the case, with schedule, showing:

The full names and ages of persons, or if for families, of the members thereof; previous occupation; condition of health; fitness for labor; capacity or ability for work; what near relatives within the township; and the efforts of trustee to secure employment for those able to labor.

(Sections 6683, 9751-9752.)

**165. Limitations to poor relief.** For medical aid, burial or aid under the compulsory education law, the Trustee shall give whatever is necessary. For other forms of aid, he cannot give more than \$15 to any one applicant without the approval of the county commissioners.

(Acts 1901, p. 323, Sec. 9750.)

**166. Removal to county asylum upon refusal to work—Relatives.** If a claimant for relief, having relatives within the township, has been given relief, further aid shall be refused until the trustee shall have called upon such relatives of such poor persons and has asked of them

to help such poor relatives for either material relief or by furnishing them employment.

If any person so applying is able to work, and refuses to labor when given opportunity, further aid shall be refused to such person except admission to the county poor asylum, where he shall be compelled to work.

(Acts 1901, p. 323, Sec. 9753-9754.)

**167. Trustee's co-operation with organized charity societies.** The Trustee shall co-operate with societies for the relief of the poor, or other organizations for charitable purposes, if any, in his township, and give and ask for information concerning the poor of his township.

He shall co-operate with such charitable associations to the end that there shall be no unnecessary duplication of relief, and that the creation of new families of paupers, through misguided and useless alms, may cease.

He shall also seek the aid of such societies in securing employment for claimants who are able to work.

(Acts 1901, p. 323, Sec. 9755.)

**168. When may give aid to non-residents.** The Trustee may, in proper cases, give temporary aid to persons who are sick, aged, injured or crippled and unable to travel even though they are non-residents of his township.

It is unlawful for the trustee to aid able-bodied non-residents, except by providing some form of manual labor. The Trustee shall endeavor to provide some form of hard manual labor for non-resident able-bodied applicants for relief.

(Acts 1901, p. 323, Sec. 9756.)

**169. When may furnish transportation to non-residents.** Expenditures by the Trustee on account of transportation of non-residents can be lawfully made only after inquiry has disclosed the legal residence of the person applying, and when given, the transportation must be in the direction of such legal residence, unless it be shown beyond reasonable doubt, that the person has some valid claim for support, or some means of support, in some other place towards which the applicant shall ask to be sent. Such inquiry may be made by correspondence, or otherwise. It is unlawful to furnish transportation to an able-bodied non-resident. Sec. 9755, Burns' R. S.

(Section 9758.)

**170. Penalty for violation of poor laws.** Any Trustee violating any of the poor laws, shall be fined \$5 to \$20.

(Sections 9759-9760.)

**171. Record of all relief given—Duplicate reports to board.** The Act, 1901, p. 323, requires the Trustee, who administers relief to persons not inmates of any public institution, to keep a record of the full name; age; sex; color; married or single, and nationality of person to whom relief is given; also the date; amount in money, or value and kind. He shall furnish the auditor with two copies of such record.

When relief is given to one for use of another, the record should show the number of such recipients; age and sex; and, if restricted to a single family, it shall show the name; age; sex; color, and nationality.

The record must be made to show the reasons for giving relief in each instance.

In the absence of such record and duplicate copies, it is unlawful for the board of commissioners to approve or allow payment of the expense of such relief to any person not an inmate of a public charitable institution, until the two copies, as above mentioned, shall have been duly filed with the auditor.

(Section 9761.)

**172. When aggrieved poor person may appeal to board of county commissioners.** If any poor person shall suppose that he or she is entitled to the benefit of the laws for such relief, and the Township Trustee has refused to give such relief, the claimant may apply to the board of commissioners, which may, if it thinks proper, direct the trustee to give the relief.

(Section 9762.)

**173. Duty when legal residence is not certain.** In case the Trustee is unable to ascertain the legal settlement of a poor person in need within the township, he shall proceed to provide for such poor person, in the same manner as by law directed to provide for other poor persons.

(Section 9763.)

**174. When Trustee shall place poor non-resident in asylum.** When ever any person entitled to relief as a pauper shall be in any township in which he has not a legal settlement, if deemed advisable, the Trustee shall grant such relief by placing such person temporarily in the county poorhouse, to be employed so far as such person is capable of employment.

(Section 9764.)

**175. When non-resident likely to become a public charge.** Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant directed to and to be executed by any constable or by any other person therein designated, cause any poor person found in the township of such overseer, likely to become a public charge and having no legal settlement therein, to be sent and conveyed, at the expense of the county, to the place where such person belongs if the same can be conveniently done; but if he or she can not be so removed, such person shall be relieved by such overseer whenever such relief is needed.

**Note:** For the proper practice in such proceedings see *Cicero Township v. Falconberry*, 14 Ind. App. 237.

(Section 9765.)

**176. Appeal of receiving Trustee to the board of commissioners.** The Trustee of the township to which paupers may be sent by virtue of Section 9764, feeling aggrieved at such delivery of pauper to his

township, may within twenty days appeal to the circuit court, of the county from which such paupers are sent, as other appeals are taken from justice's court.

(Section 9768.)

**177. When has legal residence, Trustee must receive.** If any person is removed to a township, by virtue of such judgment of the justice, it is the duty of the Trustee to receive such person if he has a legal settlement in that township.

(Section 9771.)

**178. January report of poor and settlement—Board of county commissioners.** As overseer of the poor of his township the Trustee must make settlement with the board of county commissioners annually during the first ten days of January, or oftener if such board shall so direct, of all poor relief for the past year and file all vouchers therefor as required by law.

(Section 9772.)

**179. Board's power to require reports more often.** Boards of commissioners are likewise directed to make such settlement with the Trustee at least once every year, and oftener if the board shall deem the same necessary.

(Section 9773.)

**180. Complaint for needy sick non-resident—Expense of burial.** It shall be the duty of the Trustee, on complaint made to him that any person not an inhabitant of his township is lying sick therein, or in distress, without friends or money, and likely to suffer, to examine into the case of such person and to grant temporary relief as may be required.

If any person shall die in any township, who shall not leave money or other means necessary to defray funeral expenses, it shall be the duty of such Trustee to provide for and superintend the burial of such deceased person, the necessary expenses whereof shall be paid by the township and upon the order of the Trustee.

(Section 9776.)

**181. When Trustee shall bind out poor children.** It shall be the duty of the Township Trustee to bind out such poor children as fall under his care and charge, from time to time. He shall see that the children, so bound, shall be properly treated by the persons to whom they are bound, and shall take legal means of redress in case of maltreatment.

Within 30 days after children are bound out, the trustee shall report the fact to the county auditor, together with name and residence of the persons to whom the children are bound. The auditor shall include such facts in his next report to the board of state charities.

**Note:** The statute of 1852 providing for binding out children by Trustees is Section 8383 Burns' R. S.

This section refers to children not made public wards by juvenile courts. See Section 155, this book.



(Section 9777.)

**182. When duty to remove paupers to county asylum.** Township Trustee shall, from time to time, as persons become permanent charges upon his township, as paupers, have such persons removed to the county asylum.

#### **POOR—REPORT OF EXPENSES, LEVY OF TAX.**

(Acts 1907, p. 256, Sec. 9778.)

**183. Auditor's duty to keep poor account—September report to board.** The county auditor of each county shall report to the board of county commissioners on the first day of the regular September term of said court, annually, the amount advanced during the preceding nine months and an estimate of the same for the remaining three months of the then current calendar year, to the overseer of the poor for poor relief and for medical attendance of the poor of each township by said board. When the township levies are made the proper authorities of each township, for the poor of which any such advancements have been made, shall levy a tax upon the property of such township, to reimburse the county treasury for payments made on such advancements, which taxes shall be collected as are other township taxes, and shall be paid into the county treasury. If the proper authorities of any township shall fail to levy a sufficient tax to repay such advancements, the county auditor shall levy the same. The county auditor shall keep a debit and credit account with each civil township, showing the amounts received on said levy and the amounts advanced by the boards of county commissioners to the overseers on account of the relief and burial of the poor, and on the first day of January of each year shall balance the account and as soon thereafter as possible transmit a statement of the balance to the overseers of the poor of the townships. Such balance shall be taken into account in making the levy for the reimbursement of the county the ensuing year.

#### **HOSPITALS—COUNTY MAINTENANCE—TUBERCULOSIS.**

(Acts 1913, p. 474, Sec. 3776z-3776a1.)

**184. 1913 law—Duty of the trustee—Non-resident patients.** The act 1913, p. 474, providing for the establishment of hospitals by the board of county commissioners, arranges for the admission of non-residents of the county as patients, as follows:

In any county not having a county hospital for the care and treatment of persons suffering from tuberculosis, a township trustee of any township of the county, upon the receipt of the application and certificate hereinafter provided for, may apply to the superintendent of a hospital established by any other county, for the admission of such patient. Any person residing in a county in which there is no such hospital, who desires to receive treatment in such a hospital, may apply therefor in writing to the Township Trustee of the township in which he resides on a blank to be provided by said superintendent for the purpose submitting with such application a written certificate signed by a reputable physician on a blank to be provided by

the Township Trustee for such purpose, stating that such physician has, within ten days, next preceding, examined such person, and that in his judgment, such person is suffering from tuberculosis. The Township Trustee, on receipt of such application and certificate, shall forward the same to the superintendent of any hospital for the care and treatment of tuberculosis. If such patient be accepted by such hospital the Township Trustee shall provide for his transportation thereto, and for his maintenance therein at a rate to be fixed as hereinafter provided.

**When admitted—Compensation.** Whenever the superintendent of such a county hospital shall receive from a Township Trustee of any township of any other county an application for the admission of a patient, if it appears from such application that the person therein referred to is suffering from tuberculosis, the superintendent shall notify said person to appear in person at the hospital, provided there be a vacancy in such hospital and there be no pending application from a patient residing in the county in which the hospital is located. If, upon personal examination of the patient, the superintendent is satisfied that such patient is suffering from tuberculosis, he shall admit him to the hospital. Every patient so admitted shall be a charge against the township sending such patient, at a rate to be fixed by the board of managers, which shall not exceed the per capita cost of maintenance therein, including a reasonable allowance for interest on the costs of the hospital; and the bill therefor shall, when verified, be audited and paid by the Township Trustee of the township.

The said Township Trustee shall cause an investigation to be made into the circumstances of such patient, and of his relatives legally liable for his support, and shall have the same authority as an overseer of the poor in like circumstances to collect therefrom, in whole or in part, according to their financial ability, the cost of the maintenance of such person in said hospital.

#### ANTITOXINE BLANKS—RECORD.

(Acts 1907, p. 260, Sec. 7626.)

**185. Trustees to be supplied with blank applications.** Under the provisions of act 1907, all counties, cities and towns are required to supply free of charge diphtheria antitoxin to people too poor to purchase the same.

The state board of health shall supply uniform blanks to all county health officers, who shall supply them to Township Trustees, and others. Trustees shall at all times keep themselves supplied with the application blanks for the purpose of supplying them to physicians when needed.

#### TOWNSHIP TRUSTEE—AS SCHOOL TRUSTEE, DUTIES.

(Acts 1901, p. 514, Sec. 6410.)

**186. General duties as Trustees of schools—Powers of Trustee—Graded high schools.** The duties of the School Trustee of the township are various. Among his duties are:

1st. He shall take charge of the educational affairs of his township;

2d. He shall employ teachers, establish and locate conveniently a sufficient number of schools for the education of the children therein;

3d. He shall build or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools;

4th. He may also establish and maintain in his township, as near the center thereof, as seems wise, at least one separate graded high school, to which shall be admitted all pupils who are sufficiently advanced provided at such time there are at least 25 common school graduates of school age residing in such township;

5th. He may join with school trustees of one or more school corporations and may establish and maintain joint graded high schools, in lieu of separate graded high schools, and when so done they jointly shall have the care, management and maintenance thereof;

6th. He may, instead of building a separate high school for his township, transfer the pupils of his township competent to enter a graded school to another school corporation.

#### SCHOOLS—MEDICAL INSPECTION OF CHILDREN.

(Acts 1911, p. 485, Sec. 6585a.)

**187. Examinations by physicians—**Compensation of physicians. Under the provisions of act 1911, the School Trustees are permitted and recommended to institute medical inspection of all school children under their charge, and for such purpose may appoint at least one school physician for each school corporation. No physician shall have more than 2,000 school children under his charge. The statute requires that the physician shall be temperate, able-bodied and clean in person and in character. His compensation shall be determined by the Trustee.

Such school physician shall serve one year, but he may be discharged at any time.

#### SCHOOLS—CONTAGIOUS DISEASES.

(Acts 1911, p. 121, Sec. 6616b.)

**188. Duty as to prevention of contagious and infectious diseases.** Whenever diphtheria, scarlet fever or other contagious and infectious diseases break out in any township school, the trustee having control shall have medical inspection made of the pupils, and all found in any degree ill, shall be sent home and there retained until the local health officer gives a certificate of health, then such child may be again admitted to school.

Trustees are prohibited from employing teachers or janitors who are not able-bodied or who are addicted to drugs or who are intemperate or who have tuberculosis or syphilis.

**SCHOOLS—UNCLEANLINESS.**

(Section 6616b.)

**189. Penalty for neglect annually to clean schoolhouse.** All schoolhouses shall be specially cleaned and disinfected each year before they are used for school purposes. The act provides that the cleaning shall consist in first sweeping, then scrubbing the floors, washing the windows and all wood work, including the wooden parts of seats and desks.

The disinfecting shall be done in accordance with the rules of the state board of health.

Township Trustees, and other school authorities, who neglect or refuse to obey the provisions of the act shall be fined from \$10 to \$100. Each refusal or neglect shall constitute a separate offense.

**SCHOOLS—LENGTH OF TERM.**

(Acts 1899, p. 424, Sec. 6411.)

**190. Six months of school required each year.** The trustee shall maintain a term of school at least six months in duration, and his local tuition levy must be sufficient for this when added to the state tuition revenues.

**CONTROL OF PROPERTY.**

(Acts 1907, p. 385, Sec. 6412.)

**191. Has control and management of all property of civil township—Janitors.** The School Trustee shall have the care and management of all property, real and personal, belonging to the township for common school purposes, except congressional township lands, (Section 16 of each congressional township which has not been sold), which shall be under the care of the Trustee of the civil township in which such section 16 is situated.

The Trustee shall provide such janitor help as may be deemed necessary to properly care for the schools and premises under their control, who shall be paid from the special school fund.

**Note:** Only four townships in the State have congressional school lands that have not been sold.—Editor.

**UNITED STATES FLAG.**

(Acts 1911, p. 453, Secs. 6413-6414.)

**192. Duty to have display of U. S. flag.** On the petition of a majority of the patrons of any school the Trustee shall procure a United States flag not less than six feet in length.

The Trustee shall cause the United States flag to be displayed upon every public school building under his control on every day such school is in session, the weather conditions permitting. The Trustee shall establish rules and regulations for its proper care and custody and display of the flag, and when for any cause it is not displayed, it shall be placed conspicuously in the principal room or assembly hall of the school building.



(Sections 6415-6516.)

**193. Penalty for mutilation of U. S. flag.** It is declared a misdemeanor to destroy or mutilate any flag owned by a school corporation, or to mutilate a flagstaff, and the offense is punishable by a fine of not less than \$25, and not more than \$100 for the second offense.

#### TEACHERS' REPORT.

(Acts 1865, p. 3, Sec. 6424.)

**194. Required to retain 25 per cent. of teachers' pay.** To enable Trustees to make the reports required by the law, covering statistics relating to schools, it is required that the teachers of such schools shall, at the expiration of the term of his or her school, furnish such complete report to the Trustee.

Until such report shall have been filed by the teacher with the Trustee, he shall not pay the teacher more than 75 per centum of the wages of such teacher.

#### TRUSTEE'S REPORT TO COUNTY SUPERINTENDENT.

(Acts 1883, p. 119, Sec. 6425.)

**195. August report for year ending July 31st.** The school year ends with July 31 of each year. The Trustee is required to file his annual report, on the first Monday in August, with the county superintendent. This is made up from the teachers' statistical reports to the Trustee, and shall embrace the following: The number of districts; schools taught, and their grades; teachers, males and females; average compensation of each grade; balance of tuition revenue on hand at the commencement of the current year; amount received during the year from the county treasurer, and amount expended within the year for tuition; and balance on hand; length of school taught within the year, in days; schoolhouses erected during the year; the cost of the same; the number and kind before erection, and the estimated value thereof, and of all other school property; number of volumes in the library, and the number taken out during the year ending the 31st day of July; also the number of volumes added thereto; assessment on each one hundred dollars of taxable property, and on each poll of special tax for schoolhouse erection, and amount of such levy; balance of special school revenue on hand at the commencement of the current year; amount received during the year from the county treasurer; the amount of said revenue expended during the year, and balance on hand; the number of acres of unsold congressional school lands, the value thereof, and the income therefrom; together with such other information as may be called for by the county superintendent and the superintendent of public instruction.

#### FAILURE TO REPORT.

(Acts 1865, p. 3, Sec. 6426.)

**196. Penalty for failure to report—Duties of county superintendent and county auditor.** Upon failure of the Trustee to file the reports re-

quired to be made and filed with the county superintendent at the time and manner when due, the superintendent shall, within one week of the time the next semi-annual apportionment is to be made by the county auditor, notify such auditor, in writing, of the Trustee's failure.

Whereupon the auditor is required to diminish the apportionment of such township by the sum of \$25, and withhold from such delinquent Trustee the warrant for the money apportioned to such township until such delinquent report is duly made and filed.

The board of commissioners may sue the delinquent Trustee on his bond, for the \$25 and any additional damages to the township.

### SCHOOL PROPERTY.

(Acts 1865, p. 3, Sec. 6609.)

**197. Title of all lands to be conveyed to the township.** The title to all lands acquired for school purposes shall be conveyed to the township, incorporated town, or city for which it is acquired, in the corporate name of such township, town or city, which is used for school purposes, for the use of common schools therein. In all cases in which the title to any such land is vested in any other person or corporation than as above provided, it shall be the duty of the Trustee, for school purposes of the township, town, or city, to procure the title to be vested as in this section provided.

### SCHOOLS—DONATION AND BEQUESTS.

(Acts 1877, p. 126, Sec. 6624-6627.)

**198. Duty of Trustee upon donation exceeding \$5000.** Under the provisions of act 1877, whenever any person shall give or bequeath any sum of money exceeding \$5,000 for the purpose of erecting a public school building, or seminary in any unincorporated town, with the implied or expressed condition, that an amount equal thereto shall be raised by the citizens of such town or township for a like purpose, upon petition of a majority of the legal voters of such township, the Township Trustee shall be authorized to issue the bonds of such township, in anticipation of a revenue derived from a special tax.

(Sections 6624-6627.)

**199. Proof of signatures—Bond issue—Full record of proceedings.** The Trustee shall require proof, by affidavit, that the signatures to the petition are genuine and that a majority of the legal voters have signed the same.

Such bonds shall bear a rate of interest not exceeding seven per cent. per annum, payable within seven years from their date of issue, and shall not be sold for less than 95 cents on the dollar.

A full record shall be made of the petition and all proceedings of the issue and sale of such bonds.

**OATHS.**

(Acts 1865, p. 3, Sec. 6669.)

**200.** All school officers empowered to administer. All school officers are authorized and empowered to administer all oaths relative to school business appertaining to their respective offices.

**SCHOOLS—BOOKS FOR THE POOR.**

(Acts 1891, p. 99, Sec. 6341.)

**201.** When Trustee shall furnish school books. Township Trustees are required to furnish the necessary school books to all such poor and indigent children desiring to attend school as in his opinion would be otherwise unable to attend school.

**Note:** It is believed that this section is superseded by Section 9 of the Compulsory Education Act, Section 202, this book.

(Acts 1913, p. 622, Sec. 6683.)

**202.** When assistance is to be furnished—Compulsory education. Under Sec. 9, of the compulsory education law of 1913, it is provided:

If any parent, guardian, or other person having control or charge of any child, who is subject to the provisions of this act, does not have sufficient means to furnish such child with books and clothing necessary to the attendance upon school, then the school corporation where such child resides shall furnish it temporary aid for such purpose, which aid shall be allowed and repaid to such school corporation upon the certificate of the executive officer of such school corporation, by the township overseer of the poor in the manner provided by law for the relief of the poor. Such certificate shall be accompanied by such information as will enable the overseer of the poor to make the reports required by law governing the relief of the poor.

**SCHOOL BOOKS—SALES.**

(Acts 1913, p. 658, Sec. 6355.)

**203.** When Trustee may act as depository of school books. Under the amended act 1913, it is the duty of the county superintendent to appoint some responsible dealer or merchant in the county to act as depository of school books for the ensuing year. Such depository dealer shall contract to carry a sufficient number of the adopted books to supply the trade in the county, and to sell the same at the contract price, except to other dealers or merchants, to whom the depository merchant shall sell the books, for cash at a discount of 10 per cent. from such price.

Such depository merchant shall give to the publishers satisfactory evidence of his financial responsibility, or shall furnish surety bond covering the estimated sales for the year, whereupon the contractor or publisher shall sell to the said depository merchant all books ordered by him at a discount of 15 per cent. from contract price, payment to

be made by dealer within 60 days from date of shipment. The contractor is required to deliver shipments at nearest rail or river point, freight paid.

The depository merchant shall annually in July, ascertain from county superintendent and local dealers the probable number of books to be needed for the ensuing year, and shall order same from the contractor by the first day of August, and when received shall notify the local dealers and merchants desiring to handle the school books.

The amended act also provides that the county superintendent shall at any time on the request of the Township Trustee, appoint him as a depository merchant or dealer for the sale and distribution of school books, and in such case the Trustee, in his capacity as depository merchant or dealer shall conform in all respects to the provisions of this act as they apply to any other depository merchant or dealer appointed by the county superintendent.

#### **SCHOOL BOOKS—DUTY OF TRUSTEE.**

(Acts 1893, p. 165, Sec. 6360.)

**204. Trustees must see that dealers have ample supply.** It is the duty of the Township Trustee to see that there is a sufficient supply of text books in the hands of dealers, or designated depositories, to supply the patrons and pupils of all needed books.

#### **SCHOOL BOOKS—EMBEZZLEMENT.**

(Acts 1893, p. 165, Sec. 6364.)

**205. Failure of trustee to make accounting.** Any Township Trustee, who shall fraudulently fail or refuse, at the expiration of his term, to account for and pay over to any person entitled to receive the same, all money and school books not previously accounted for, which may have come into his hands, shall be deemed guilty of embezzlement, and upon conviction shall be imprisoned from one to five years, and fined not to exceed \$1,000, and rendered incapable of holding any office of trust and profit for any determinate period.

#### **TOWNSHIP DEFICIENCY.**

(Acts 1905, p. 34, Sec. 6435.)

**206. Procedure to procure assistance, for tuition purposes.** Whenever any Trustee of a township or Board of Trustees of any school town shall ascertain that there is not a sufficient amount of tuition revenue in his or their hands to enable him or them to maintain the public schools therein for the minimum term now or hereafter provided by law in such current school year, he or they, as the case may be, shall certify in writing under oath such fact to the county superintendent of his or their county, stating therein the rate of the levy for local tuition purposes on each one hundred dollars, and the taxes on each taxable poll made for the supplementary tuition tax by such township or school town in the year immediately previous to the school year in which such deficiency occurs, or will occur; also,



stating the full amount received for tuition from each source, the names and number of teachers employed, the rate per diem paid them, the number of days each has taught and when he began teaching, and an estimate of the amount that will be necessary over and above the tuition revenue then on hand to complete such legal minimum term of all the public schools in such school corporation. Said certificate shall be executed in duplicate. Said county superintendent shall immediately examine such certificate, and if he shall find the facts stated therein to be true, and shall further find that such school corporation has levied the highest amount authorized by law for such school municipality as supplementary tuition tax for the year in which such deficiency will occur, he shall forward one of such certificates to the state superintendent of public instruction, together with the result of his examination, and with the name and postoffice address of such Township Trustee or the treasurer of such school corporation.

#### **DEFICIENCY, 25 CENTS LEVY FOR TUITION PURPOSES.**

(Acts 1907, p. 449, Sec. 6436.)

**207. Local requirements so as to procure "deficiency" money.** No such Township Trustee or treasurer of such school town shall be entitled to draw or receive the funds provided in this act unless said Township Trustee or School Board of Trustees has levied a local tuition tax of at least twenty-five cents on \$100.00 of taxable property in such township or school town: And providing, That where any such School Trustee or corporation is maintaining a seven months' term of school and finds the amount of tuition revenue insufficient for such purpose, such Trustee or the treasurer of such school corporation shall be entitled to draw or receive the funds provided in this act in the event only such Trustee or school board has levied a local tuition tax of not less than forty cents on \$100.00 of taxable property in such township or school town.

#### **DEFICIENCY—USES OF FUND.**

(Acts 1905, p. 34, Sec. 6437.)

**208. How "deficiency" money received shall be used.** The Township Trustee or School Board of Trustees shall use the amount so received from the State for the payment of the salaries of teachers employed in his township or their town to enable him or them to maintain schools therein for the full term as required by law during the year for which it was received, and shall use it for no other purpose.

#### **DEFICIENCY—LIABILITY FOR FUND.**

(Acts 1905, p. 34, Sec. 6438.)

**209. Trustee's liability for "deficiency" money.** The Township Trustee, or treasurer of any town school board and the sureties on their bonds receiving such funds from the State, shall be liable for the same as for any other township or school funds they may receive in an official capacity.

**ENUMERATION OF SCHOOL CHILDREN.**

(Acts 1895, p. 127, Sec. 6447.)

**210. Annual enumeration—Ages 6 to 21 years.** School Trustees are required between the 10th day and 30th day of April, each year, to take, or cause to be taken an enumeration of all unmarried persons between the ages of six and twenty-one years.

The enumerator shall take an oath or affirmation to take the same accurately and truly to the best of his skill and ability, which oath shall be made a matter of record in the office of the School Trustee.

The duties of the enumerator are various, and reference to the act should be had to insure a proper report.

The act provides that such enumerator shall be allowed a reasonable compensation per diem for his services, to be paid by the Township Trustee out of his special school fund. Such employment must be made by the day.

**Note:** If the enumeration is taken by the Trustee himself, he receives his per diem as Trustee only, which is paid from the township fund.

(Acts 1913, p. 624, Sec. 6685b.)

**211. Duties of enumerators.** Under the compulsory education act of 1913, it is provided:

In order that the provisions of the compulsory education act may be more definitely enforced, it is provided that the enumerators of school children, in taking the annual school census shall ascertain and record the place and date of birth of every child enumerated, and the parent, guardian, or other persons having control or charge of such children, shall subscribe and take oath or affirmation that such record is true to the best of his information, knowledge, or belief. The enumerator is hereby empowered to administer such oath or affirmation and any parent, guardian, or other person having control or charge of children, who shall refuse to take such oath or affirmation, unless the refusal be based upon the want of knowledge, information, or belief, shall be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one dollar (\$1.00).

(Acts 1913, p. 624, Sec. 6685c.)

**212. Information for the attendance officer.** Section 14 of the act requires of the Trustee that: On or before the first day of each school year he shall furnish the attendance officer thereof with the names of the children, subject to the provisions of this act, who are enumerated in the regular enumeration lists. These names shall be alphabetically arranged, and such official shall give to the attendance officer all information contained in the regular enumeration returns concerning the children so listed. The county and each school corporation, shall provide its own attendance officers with the necessary postage and such blanks as may be required by the state board of truancy or the state superintendent of public instruction pertaining to the due execution of the duties of such attendance officers.

**COUNTY SUPERINTENDENT'S ENUMERATION.**

(Acts 1873, p. 68, Sec. 6397.)

**213. County superintendent makes on failure of Trustee—At Trustee's cost—May 1st.** Whenever the Township Trustee shall neglect to file enumeration of school children of his township as required by law, it becomes the duty of the county superintendent, immediately after May 1st, in each year, to employ some suitable person to take the same, and to allow a reasonable compensation for such services, payable from the special school fund of such township.

The superintendent shall proceed to recover the same in the name of the State by action against the Trustee in his individual capacity and in such suit the superintendent shall be a competent witness.

**ENUMERATION—WHERE FILED.**

(Acts 1873, p. 68, Sec. 6463.)

**214. When incorrect superintendent may have retaken.** Each Township Trustee and the president of the board of School Trustees of towns and cities shall, on or before the first day of May, annually, report to and file with the county superintendent of the proper county, a copy of the enumeration for school purposes in his township, town or city, with a list of transfers to such township, town or city, with his affidavit endorsed thereon to the effect that the same is, to the best of his knowledge and belief, full and accurate and taken in accordance with the provisions of the law governing the enumeration. When said county superintendent, however, on an examination of the enumeration returns of any township, town or city, finds any evidence that the enumeration is excessive in number or in any other way incorrect he may require the same to be retaken and returned, and if he deem it necessary he may, for this purpose, appoint persons to perform the service, who shall take the same oath, perform the same duties, and receive the same compensation out of the same funds as the person or persons who took the enumeration in the first place, and the school revenue shall be distributed to such school corporation upon the corrected returns.

**SCHOOL TRANSFER OF PUPILS.**

(Acts 1909, p. 173, Sec. 6449.)

**215. Reasons for a transfer—Duties of Trustee.** Whenever any child, resident in one school corporation of the State, may be better accommodated in the school of another school corporation, the School Trustee, Board of School Trustees or commissioners of the school corporation in which such child resides shall, upon application of the parent, guardian or custodian of such child, made at any time, grant an order of transfer which shall entitle such child to attend the schools of the corporation to which such transfer is made under the conditions hereinafter prescribed: Provided, That in determining whether a child can be better accommodated in the schools of another school corporation than that in which such child resides, such matters as to the proximity of the schools of the township and city to the residence of

such child desiring the transfer; the kind and character of the roads to each; the means of transportation, if any, to each; the crowded conditions of the schools in either of the two school corporations shall be pertinent: and, Provided, further, That the desire to attend a commissioned or accredited [certified] high school, when no such school is maintained in the resident school corporation, or when in attending such commissioned or accredited high school the living expenses can be more advantageously provided for in another school corporation, or when such commissioned or accredited high school in another school corporation is more accessible, shall be deemed reasons for such transfer: and, Provided, further, That the provisions of this act shall be construed as applying in the same manner to resident pupils who are graduates from the eighth grade in the common schools of this State, or its equivalent, who may desire to attend a private school of the secondary rank, which having been duly approved by the state board of education, holds the same rank as a commissioned high school.

#### **SCHOOLS—TRANSFERS OUTSIDE OF STATE.**

(Acts 1911, p. 481, Sec. 6448a.)

**216. When a transfer can be made outside of State.** That whenever the children, resident in any school corporation of the State of Indiana may be better accommodated in the schools of another school corporation or district outside of the State of Indiana but adjoining such school corporation in Indiana, then the School Trustee, Board of School Trustees or commissioners of such school corporation in which such children reside, shall, upon petition of a majority of school patrons of such school corporation, grant orders of transfer to all children in such school corporation, between the ages of six and twenty-one years who may desire to attend school, to such school corporation or district outside of the State of Indiana; and for each child so transferred, such School Trustee of each township and the Trustees of each school town and school city shall pay to such foreign school corporation as a tuition fee for each pupil, a sum not exceeding two dollars per month for common school education, and a sum not exceeding four dollars per month for graded high school education, payable from the special fund of such school corporation: Provided, That such transfer shall not be made if a graded high school be situated within a distance of two miles of such school corporation within the State of Indiana: Provided, further, That no transfers shall be made until a satisfactory written contract shall be executed by such school corporation and such foreign school corporation or proper school authority.

#### **TUITION FOR TRANSFERRED PUPILS.**

(Acts 1915, p. 35, amending Sec. 6450.)

**217. Tuition for transferred pupils—How reckoned.** If such transfer is granted, the School Trustee or Board of School Trustees, or commissioners of the school corporation in which such child resides, shall pay out of the special school fund, or out of the township fund



or out of the tuition fund at his discretion, to the School Trustee, Board of School Trustees or commissioners of the school corporation to which such child is transferred, as tuition for such child, an amount equal to the annual per capita cost of education in the corporation to which said child is transferred; or such a part of it as the term of enrollment of said child in the schools of the creditor corporation may require: Provided, That the per capita cost in high schools shall be calculated upon the basis of expenditures for high school purposes, and the per capita cost in grade schools shall be calculated upon the basis of expenditure for the schools below the high school: Provided, That in case the corporation transferring said child maintains a school, or schools, of like grade to which said child is transferred, the rate of tuition shall in no case exceed the per capita cost in said school, or schools, maintained by the corporation which transfers such child. In calculating the per capita cost, only expenditures for the current year, not including permanent improvements and additions, shall be counted and shall be based on the following items: Salaries of instructors, supervisors and superintendent, salary of janitor, fuel and light, printing and laboratory supplies.

#### TRANSFERS—TIME FOR PAYMENTS.

(Acts 1901, p. 448, Sec. 6452.)

**218. Auditor acts as arbiter—Disputes as to transfers—Time of payment.** February 1st and July 30th, of each year are the dates on which the indebtedness for tuition for transferred children shall be due and payable between school corporations.

If any School Trustee refuses to make such settlement, the matter shall be referred by the creditor Trustee, in writing, to the county auditor who has the power to hear and determine the same.

**Note:** It is believed that this section is repealed. Acts 1907, p. 221. Section 6454 Burns' R. S., Section 220, this book, now governs the payment for transfers.

#### TRANSFER—APPEAL TO SUPERINTENDENT.

(Acts 1901, p. 448, Sec. 6451.)

**219. When transfer denied—Appeal—Rights of parent or guardian.** If an order of transfer of a child be denied, the parent, guardian or custodian of the child shall have the right to appeal the case to the county superintendent of schools whose decision in the matter shall be final.

#### TRANSFERS—SETTLEMENTS.

(Acts 1909, p. 331, Sec. 6454.)

**220. Settlements between corporations—In June—How paid.** Any School Trustee, Board of School Trustees or commissioners of any school corporation which shall receive transfer of children from another school corporation, shall on or before the third Monday in June of each year, file with the School Trustee, Board of School Trustees or commissioners of the school corporation in which such transferred child

or children reside, a complete statement showing all of such transfers, giving the name of each child and the school corporation from which each child was received, together with a statement of the attendance of each child so transferred and the amounts due to the corporation to which such transfer has been made because of the same, and also a certified statement of the annual per capita cost of maintaining the school or schools which such transferred child or children attended during the year. The School Trustee, Board of School Trustees or commissioners of the school corporation from which said child or children were transferred shall pay out of the special school fund or out of the township fund, or out of the tuition fund, of his corporation, at his discretion, to the School Trustee, Board of School Trustees or commissioners of the school corporation to which such child or children were transferred, on or before the 1st day of August next following the receipt of the aforesaid statement of the amount of tuition thus due and in the event of failure to pay said tuition when due, a penalty of ten per cent. shall attach from and after the 1st day of August of the year in which such tuition is due: Provided, That the School Trustee, Board of School Trustees or commissioners of any school corporation now indebted to any other school corporation on account of the transfer of any child or children, are hereby authorized to, and they shall pay such indebtedness out of the special school fund now belonging to the corporation so indebted, and not otherwise appropriated.

#### **TRANSFERS—TO CORPORATION OF 100,000.**

(Acts 1901, p. 513, Sec. 6455.)

**221. Transfers when made to Indianapolis.** Whenever a child shall be transferred for school purposes from a township school to a school city containing 100,000 or more inhabitants (Indianapolis) and the parent, guardian or custodian of such child shall be a taxpayer of such city, the amount of tuition to be paid by the Trustee to such school city, on account of such transfer, shall be reduced to the extent of the current school taxes that shall be levied against such parent, guardian or custodian by such school city.

#### **PAYMENT FOR TRANSFER.**

(Acts 1865, p. 3, Sec. 6457.)

**222. How payment for transfer is made.** Each person so transferred, for educational purposes, to a township, town or city in an adjoining county, shall annually pay to the treasurer of such township, town or city (when a tax is levied therein for the purposes aforesaid) a sum equal to the tax levied, computing the same upon the property and poll, liable to tax, of such persons in the township, town or city where he resides, according to the valuation thereof by the proper assessor, which payment shall release his property from special school tax in the township in which he resides. In default of such payment he shall be debarred from educational privileges in the township, town or city to which he may have been transferred, and the Trustee thereof shall

notify the Trustee of the township, town or city in which he (the person transferred) resides, of such exclusion.

**Note:** Evidently this section applies only to cases where the parent or patron is transferred as provided by Section 6448 Burns' R. S.

#### **TRANSFERS—ORPHANS' HOMES.**

(Acts 1907, p. 310, Sec. 6458.)

**223. Duty of trustees—Children from orphans' homes.** All dependent children in orphans' homes or custodial institutions for dependent children shall be educated by the Trustee or school board in which the institution is located.

Any authority which has the placing of such child in such home, or institution, shall immediately give notice to the school authority from whence such child had legal settlement. Such Trustee or school board shall issue a transfer certificate for each dependent child in such home and send the same to the proper school authority where the home is located.

(Acts 1911, p. 332, Sec. 6685e.)

**224. Requirement of transfer for pupils in charitable, correctional and training schools.** Under a subsequent act (1911) all institutions conducting a correctional, charitable, educational or training school are prohibited from accepting any child between the age of six and twenty-one as an inmate, unless a school transfer issued by the proper school officer accompanies the admission of such child. Such transfer shall be binding so long as the child remains in such institution.

Section 2 of the act provides for the compulsory education of all inmates of such institutions who are of school age unless physically or mentally disqualified. Any institution that violates this requirement is guilty of a misdemeanor, and is finable not more than \$25, for each offense.

#### **TRANSFERS—ORPHANS' HOMES—PAYING TUITION.**

(Acts 1903, p. 15, Sec. 6459.)

**225. How payment for tuition is made—Pupils from orphans' home.** The school corporation in which such child has settlement shall pay out of the special school fund of said corporation to the school corporation in which said institution is located, as tuition for said child, an amount equal to the annual per capita cost of education, in the corporation to which said child is transferred, or such a part of it as the child or children are actually school residents of the corporation to which they were transferred: Provided, That the rate of tuition per month shall not exceed one dollar and fifty cents. In calculating the per capita cost, only expenditures for current year, not including permanent improvements and additions, shall be counted.

**Note:** It is evident that this section means that payment should be made pro rata for the time the child is enrolled.

**TRANSPORTATION—CENTRALIZED SCHOOL.**

(Acts 1911, p. 647, Sec. 6423a.)

**226. Transportation, non-resident pupils — Centralized school.** Where a township has established a centralized school and has provided transportation to such school, it shall be the duty of the Trustee, where additional wagons are not needed, or an additional distance is not required, to furnish transportation to all pupils from adjoining townships who have been transferred to such school.

The Trustee having charge of the school from which such children have been transferred shall pay to the other Trustee an amount equal to the per capita cost of transportation of the pupils of such township.

**SCHOOLS—TRANSPORTATION OF PUPILS—PAYMENT OF EXPENSE.**

(Acts 1913, p. 655, Sec. 6423.)

**227. Transportation—Discontinued school—Drivers furnish teams —Special school fund.** It shall be the duty of the Township Trustees to provide for the education of such pupils as are affected by such or any former discontinuance in other schools, and they shall provide and maintain means of transportation for all such pupils that live at a greater distance than two (2) miles and for all pupils between the ages of six (6) and twelve (12) that live less than two (2) miles and more than one (1) mile from the schools to which they may be transferred, either within the township or in an adjoining township or school corporation, as a result of such discontinuance. In all townships where a school has been abandoned under the provisions of this act, the Trustee shall provide for the transportation of all pupils of any other school of such township who live more than two (2) miles and all pupils between the ages of six (6) and twelve (12) that live more than one (1) mile from the school to which they are attached, whenever a majority of the patrons of such school petition the Trustee to provide such transportation. Such transportation shall be in comfortable and safe conveyances. The drivers of such conveyances shall furnish the teams therefor, and shall use every care for the safety of the children under their charge, and shall maintain discipline in such conveyances. Restrictions as to the use of public highways shall not apply to such conveyances. The expenses necessitated by the carrying into effect of the provisions of this act shall be paid from the special school fund.

**SCHOOLHOUSE, WHEN SOLD.**

(Acts 1865, p. 3, Sec. 6615.)

**228. Procedure for sale of schoolhouse—Conveyance.** The proper Trustee may, whenever a schoolhouse shall have been removed to a different location, or a new one erected for the school in a different place, if the land whereon the same is situated belongs unconditionally to the township, town or city, sell the same, when, in his opinion, it is



advantageous to the township, town or city, so to do, for the highest price that can be obtained therefor; and upon the payment of the purchase money to the township, town or city treasurer, he shall execute to the purchaser a deed of conveyance, which shall be sufficient to vest in such purchaser all the title of such township, town or city thereto. The money derived from such sale shall be a part of the special school revenue.

**Note:** For sale of property of civil township, see Acts 1915, p. 91, Section 142, this book.

### SALE OF SCHOOL PROPERTY.

(Acts 1907, p. 575, Sec. 6616.)

**229. Sale of school property by Trustee—Petition—Appraisal—Newspaper publication—Special school revenue.** In all cases where school properties have not been used and occupied for school purposes for a period of two years, or are unnecessary by reason of the construction of other schoolhouses, and the said school property shall belong unconditionally to the township, the proper Trustee may upon petition signed by two-thirds (2-3) of the qualified voters of the school district wherein said property is situated, sell the same for the highest price that can be obtained therefor, but not less than two-thirds of its appraised value, and upon the payment of the purchase money to the Township Trustee, he shall execute to the purchaser a deed of conveyance, if of real estate, and a bill of sale if of building or buildings, which shall be sufficient to vest in such purchaser all the title of such township thereto. Such sale shall be made only after said property has been duly appraised by three disinterested householders of the neighborhood, as other property is required to be appraised, and the publication of notice of the sale thereof for three successive weeks in a newspaper of general circulation printed and published in the township, if any, otherwise in such paper printed and published in the township nearest thereto, and by posting five (5) notices of such sale in the township, three of which shall be in the district wherein said property is situated, at least three weeks prior to the date of such sale. The money derived from such sale shall be a part of the special school revenue and shall be duly recorded and accounted for by such Trustee.

**Note:** See note under Section 228, this book.

### REMOVAL AND RELOCATION OF SCHOOLHOUSES.

(Acts 1893, p. 17, Sec. 6417.)

**230. Superintendent's power, and duties therein.** Whenever it becomes necessary for the Trustee to change and re-establish the site of any school building and remove the buildings to a new site and location, the Trustee must present his petition therefor signed by himself and by a majority of the patrons of such school to the county superintendent, together with proof that the petition is signed by such majority. Such petition should set forth the place and particular point to which it is desired to change and relocate the school site, and

the reasons for the proposed change. The Trustee shall not change the school site until the superintendent shall have issued an order granting such change.

(Acts 1893, p. 17, Sec. 6418.)

**231. Trustee's duties on petition to remove schoolhouse.** Before the county superintendent shall grant such order the Trustee shall file with that officer his affidavit that he has caused notice to be given of such petition, the purposes thereof, and the place of the change of location of such school building, and the time the same will be presented to such county superintendent, by posting notices in five public places in his township, three of which shall be in the immediate neighborhood from where the school building is to be removed, at least twenty days before the hearing by the county superintendent.

(Act 1893, p. 17, Sec. 6419.)

**232. Penalty for unlawfully removing a schoolhouse.** Any Trustee violating any provisions of the act shall be guilty of a misdemeanor, and shall be fined not less than \$50 nor more than \$500.

#### ABANDONMENT OF SCHOOLS.

(Acts 1901, p. 159, Sec. 6420.)

**233. Abandonment upon petition.** Trustees shall not abandon any district school in his township until he shall have first procured the written consent therefor signed by a majority of those legal voters who are entitled to vote for Trustee in such district.

This rule does not apply to such schools which have an average attendance of twelve pupils, or fewer.

It becomes the Trustee's duty to re-establish any abandoned district school upon the written petition of two-thirds of the legal voters, who are entitled to a vote for Township Trustee.

**Note:** This section must be construed with Section 6422 Burns' R. S., Section 235 this book.

(Acts 1901, p. 437, Sec. 6421.)

**234. When abandoned school shall be consolidated with another school.** Whenever a majority of the legal voters of any school district shall petition the Trustee for the abandonment of their school and the consolidation of the school with the school of another school district of the township, it shall be his duty to comply with the petition, and to provide for the education of the children of the abandoned district in other schools, as asked for in the petition.

#### SCHOOLS—DISCONTINUANCE.

(Acts 1909, p. 73, Sec. 6422.)

**235. When Trustee may discontinue temporarily—Re-establishment.** Trustees shall discontinue and temporarily abandon all schools under their charge at which the average daily attendance during the last preceding year has been twelve pupils or fewer, and may likewise tempo-

rarily abandon a school where the daily average for last preceding school year has been fifteen pupils or fewer, provided that the conditions as to roads, streams and bridges permit such temporary discontinuance.

Such school may be re-established by the Trustee, in his discretion, whenever he feels assured of the daily average attendance of more than twelve pupils.

Nothing in the act shall authorize the discontinuance of a school exclusively for colored pupils, and any so discontinued shall be re-established.

Upon petition of a majority of patrons, any school so abandoned shall be re-established by the Trustee.

**Note:** This section must be construed in connection with Sections 6420 and 6421, Sections 233 and 234 this book.

### DISSOLUTION—SCHOOL IN INCORPORATED TOWN.

(Acts 1915, p. 199, amending Sec. 6480.)

**236. How to determine equitable right of township.** Any incorporated town in the State, that has no school indebtedness, the inhabitants of which do not exceed two thousand (2,000), as shown by the last preceding general census, may, through its town Board of Trustees, abandon and discontinue its management and control of public schools within such incorporated town, and abolish the Board of School Trustees therein. Whenever a town so discontinuing its Board of School Trustees shall desire to again take control of its school affairs the town board may on petition signed by a majority of the resident freeholders, pass an ordinance to that effect and appoint a board of School Trustees: Provided, That whenever a town passes such ordinance to again take control of its school affairs as herein above provided, it shall be the duty of the county assessor, county auditor and county superintendent of schools, to act as an appraising board to determine what if any equitable right the township has in the school property thus taken over and to determine the extent to which such town is indebted to the township, and the Board of Town Trustees shall pay over to the township such amount as has been so determined; before said town shall be permitted to take over the schools: Provided, further, That such school property shall not be appraised and taken over by the town as above provided unless a majority of the resident freeholders in the township residing outside of said town, consent to such transfer: Provided, further, That no town board shall dissolve the school corporation except by consent of a majority of the freeholders therein.

### CONVEYANCE OF PROPERTY TO TOWNSHIP.

(Section 6480a.)

**237. Dissolution of school in incorporated town—Deed made to the township.** The town Board of Trustees of any such incorporated town, upon deciding to abandon and discontinue the control of the public schools therein, shall make or cause to be made a good and sufficient

deed, conveying all real estate belonging to such school town to the Township Trustee of the township in which such incorporated town is located; and shall transfer all the personal property and fixtures belonging to such school town to such Township Trustee, all of which shall be accepted and held by such Township Trustee for the use and purposes of the school township wherein such town is located: Provided, That when any such incorporated town shall be located in two or more contiguous counties, the children of school age who are residents of such incorporated town shall be entitled to the same school privileges in such incorporated town as the children of school age who are residents, exclusively of the township which has assumed ownership and control of such school and school property. And all school revenue which is paid or which may hereafter be paid by that portion of such incorporated town lying outside of the township which has assumed control and ownership of such school and school property, shall be paid to the Township Trustee of the township wherein such school is located, in the same way and manner as such revenues were paid to the School Trustees of such incorporated town before such town relinquished control and possession of such school and school property.

#### **TOWNSHIP CONTROL.**

(Section 6480b.)

**238. Trustee controls schools in town, when dissolved.** After the requirements set forth in the preceding section are complied with, the Township Trustee shall have full and complete control of all the schools within such town and shall conduct the same as provided for by law for the other schools of such township. And all children of school age residing outside of the township in which such school and school property is situated but within the limits of any such incorporated town, as herein provided, shall possess all the rights and privileges to attend the school or schools located within such incorporated town, the same as though they lived in the township wherein such school or school property is located.

#### **COUNTY AUDITOR'S APPORTIONMENT.**

(Acts 1873, p. 80, Sec. 6475.)

**239. Two distributions of taxes each year by auditor.** The Trustees receive two apportionments, made by the county auditor, each year, to wit: The last Monday in January and the second Monday in July.

These embrace moneys derived from taxation, interest of congressional school fund, and the per capita common school revenue apportioned by the state superintendent of public instruction.

#### **SCHOOL DIRECTOR.**

(Acts 1865, p. 3, Sec. 6589.)

**240. Election annually first Saturday in October—Removal—Appointment.** Voters shall meet on the first Saturday in October and



elect one of their number as school director. He shall notify the Trustee of such election within 10 days and take an oath of office.

In case of failure to elect, the Trustee shall forthwith appoint the school director for such school district, so failing.

The school director can be removed upon a petition of three-fourths of the persons attached to the school, who are entitled to vote at school meetings.

(Acts 1872, p. 68, Sec. 6590.)

**241. Duties of school director—School meetings.** The school director acts as the organ of communication between the inhabitants and the Township Trustee. He shall preside at all school meetings and keep a record of the proceedings.

Such meetings shall have the power to determine any additional branches to be taught in such school; the time at which school shall be taught, provided that the school revenues shall be expended within the year for which they were apportioned; to petition the Trustee for such repairs as are deemed necessary in their schoolhouse; to petition the Trustee for the removal of their schoolhouse to a more convenient location; to petition for the erection of a new schoolhouse, and the sale of an old one and the lands belonging thereto, and upon any other subject connected therewith.

At such meetings all taxpayers, except married women and minors, are entitled to vote.

However, nothing in the act prevents the Trustee from exercising a sound discretion as to propriety or expediency of complying with the prayers of the petitioners, and the cost thereof.

When the petition embraces the subject of repairs, the removal or erection of a schoolhouse, an estimate of the cost thereof shall be furnished to the Trustee.

The school director shall take charge of the schoolhouse and property belonging thereto, under the general order and concurrence of the Trustee, and shall preserve the same.

**Note:** This section should be construed in connection with the advisory board law, and in case of conflict the later law governs.

(Acts 1865, p. 3, Sec. 6606.)

**242. Power to exclude pupil temporarily.** The school director shall visit and inspect the school from time to time, and when necessary may exclude any refractory pupils therefrom, but such exclusion shall not extend beyond the current term, and may in the director's discretion be for a shorter period.

(Section 6607.)

**243. Appeal to trustee of suspended pupil.** The decision of the director in excluding a pupil shall be subject to an appeal to the Township Trustee, whose decision shall be final.

**SCHOOLHOUSE IN ANNEXED TERRITORY.**

(Acts 1893, p. 194, Sec. 6611.)

**244. Annexation to incorporated town or city—Conveyance of school property.** Whenever there has been, or may hereafter be, by proper proceedings, any territory annexed to any city or incorporated town of this State, which territory included within such boundary as annexed any real estate which, prior to such annexation, was the property of the school township adjoining such town or city, and used for school purposes by such school township, such real estate shall, by virtue of such annexation, at once become in fee simple the property of the school corporation of such town or city within the corporate boundaries of which it is found after such annexation of territory, and it is hereby made the duty of the Township Trustee to at once execute and deliver to the school corporation of such town or city a deed conveying such title as his school township has for all school property which has passed, by such proceedings, from the territorial jurisdiction of the township to that of a town or city.

**ANNEXATION OF SCHOOL TERRITORY—LIABILITY FOR SCHOOL DEBTS.**

(Acts 1913, p. 101, Sec. 6612.)

**245. Liability for debts.** In all cases where any city or incorporated town of this State shall hereafter annex any territory, or where any town shall be hereafter incorporated in which territory so annexed or incorporated there shall be the property of any school township used by such school township for school purposes, and such school township shall be at the date of such annexations, indebted either for the purchase of said school property, or for buildings constructed thereon, it shall and is hereby made the duty of the school corporation of such city or incorporated town to pay such indebtedness, and such school corporation is hereby declared to be and made liable therefor. Until such city or town school corporation shall have paid such indebtedness, it shall not be entitled to a deed therefor, and if such indebtedness is paid by said school township, such school township shall be entitled to recover the amount so paid from said city school corporation with interest at the rate of six per cent. per annum from date of payment, and on payment of such amount the said school corporation shall be entitled to a deed of such property as now by law provided. Whenever any annexation of such property has been made prior to the passage of this act and subsequent to the passage of the act of which this is amendatory, then liability on the part of such annexing city or town for any such indebtedness remaining unpaid at the time of the passage of this act, shall be under this act the same as if such annexation had taken place subsequent to the passage of this act.

(Acts 1915, p. 570.)

**245a. Liability for civil debts.** In all cases where any city or incorporated town of this State has annexed or shall hereafter annex any

territory, or where any town has been or shall hereafter be incorporated, and where the civil township, from which such territory was or is taken, is indebted or has outstanding unpaid bonds or other obligations at the time of such annexation or incorporation of such territory, then such city or town, as the case may be, shall be liable for, and pay so much of such indebtedness of such civil township in proportion that the assessed valuation of property in such annexed or incorporated territory is to the valuation of all property in such township, as the same is assessed for general taxation, prior to the annexation of any such territory or incorporation of any such town. Such annexing city or town, or newly incorporated town shall pay such part or proportion of such unpaid indebtedness of such civil township to the Township Trustee: Provided, That in case such indebtedness consists of outstanding unpaid bonds or notes, of such civil township, then such payment to such Trustee shall be made at such time as the principal, or any part thereof, or interest of such bonds or notes falls or becomes due.

#### **SITE FOR SCHOOLHOUSE—EMINENT DOMAIN.**

(Acts 1907, p. 114, Secs. 6633-6636.)

**246. Eminent Domain—Purchase of real estate—Circuit court.** Whenever, in the opinion of the Trustees of school corporations of any city or town, or of the Township Trustee of any township in the State, it shall be considered necessary to purchase any real estate, on which to build a schoolhouse, or for any other purposes connected therewith, such Township Trustee or School Trustees, or a majority of them, may file a petition in the circuit court of said county, asking for the appointment of appraisers to appraise and assess the value of said real estate.

(Section 6634-6636.)

**247. When Trustee may make tender, and how.** The act outlines the duties of the appraisers who are appointed by the court, after a ten days' notice of the pendency of the petition, and provides that the court shall cause the land to be conveyed to the township, upon payment of the appraised value.

Before beginning the proceedings, a tender or offer may be made by the Trustee for the property to its owner of an amount deemed a reasonable value therefor, and if the appraisement is equal or less than the tender, then the cause shall be prosecuted at the costs of the owner. Where there is no tender, the action shall be at the cost of the petitioners.

#### **SCHOOLS—SANTARY BUILDINGS.**

(Acts 1915, p. 94, amending Sec. 6616a-e.)

**248. 1913 law relative to sanitary school buildings.** The requirements mentioned in the amending act, 1915, relative to the erection, or remodeling, thereafter, of sanitary schoolhouses are ample and embrace the subjects of, viz:

Sites,  
Buildings,  
Lighting and heating,  
Blackboards and cloak rooms,  
Water supplies and drinking arrangements,  
Heating and ventilation, and  
Water closets and out houses.

The specifications under each of the above heads are quite complete, and any Trustee before contracting for a new school building or remodeling one should procure the legal requirements through the state board of health at Indianapolis.

An act of 1911 also contains provisions touching duties of Trustees concerning infectious diseases which have had mention elsewhere.

### USE OF SCHOOLHOUSE FOR PRIVATE SCHOOL.

(Acts 1865, p. 3, Sec. 6613.)

**249.** Use of schoolhouse for a private school. When a schoolhouse is unoccupied by a common school of the State, and the people who form the school at such house desire that a private school be taught therein, and a majority of them make application to the Trustee having charge of such house for the use of it for such private school, it shall be the duty of the Trustee to permit said schoolhouse to be used for such private school by such teacher as may be mentioned in the application, but not for a longer time than until said house may be wanted for a public school; and such permission and use shall be upon the condition that the teacher employed in said school shall report, in writing, to the Trustee—

First. The number of teachers employed, distinguishing between male and female.

Second. The number of pupils admitted into the school within the term, and the average daily attendance.

Third. The cost of tuition, per pupil per month, in said school.

### USE OF SCHOOLHOUSE FOR OTHER PURPOSES.

(Acts 1859, p. 181, Sec. 6614.)

**250.** Use of schoolhouse for political and religious meetings. If a majority of the legal voters of any school district desire the use of the schoolhouse of such district for other purposes than common schools, when unoccupied for common school purposes, the Trustee shall, upon such application, authorize the director of such school district to permit the people of such district to use the house for any such purposes, giving equal rights and privileges to all religious denominations and political parties, without any regard whatever to the numerical strength of any religious denomination or political party of such district.



**SCHOOLS—BUILDINGS USED FOR PUBLIC GATHERINGS.**

(Acts 1913, p. 947, Sec. 6614b.)

**251. Use of schoolhouse for public gatherings.** Upon application of not less than one-half of the voters residing within two (2) miles of any schoolhouse or other public buildings or grounds, which are capable of being more widely used as public meeting places for non-partisan gatherings of citizens, for the presentation and discussion of public questions or for other civic, social or recreational activities, the Township Trustee or other authorities having charge of such schoolhouses, public buildings or grounds shall allow the use of such buildings or grounds for the open presentation and free discussion of public questions, and may allow the use of such buildings or grounds for such other civic, social and recreational activities as in the opinion of the controlling board do not interfere with the prime purpose of the building or grounds.

**BUILDINGS TO BE LIGHTED AND HEATED.**

(Section 6614c.)

**252. Buildings to be lighted and heated.** Where the citizens of any community are organized into a nonpartisan, nonsectarian, non-exclusive association for the presentation and discussion of public questions, the school board or other body having charge of the schoolhouses or other public properties which are capable of being used as meeting places for such organization, when not being used for their prime purpose, shall provide, free of charge, light, heat and janitor service, where necessary, and shall make such other provisions as may be necessary for the free and convenient use of such building or grounds, by such organization for weekly, biweekly or monthly gatherings at such times as the citizens' organization shall request or designate.

(Section 6614d.)

**253. Use of to be free and gratuitous—Control.** The school board or other board having charge of the schoolhouses or other public properties, may provide for the free and gratuitous use of the schoolhouses or other public properties under their charge for such other civic, social and recreational activities, as in their opinion do not interfere with the prime use of the buildings or properties.

(Section 6614e.)

**254. Personal responsibility for damage—Refusal.** The person or persons making application for the use of a schoolhouse or other public property for public meetings, shall be responsible for all damage to the property occurring at such meetings, ordinary wear and tear excepted, and upon failure of the responsible person or persons to respond in damages for any such injury to the property, the school board or other board in charge of the schoolhouse or other public property, may refuse all future applications for the wider use of the property until such injury is repaired, without expense to the board in charge of the property.

**VOCATIONAL EDUCATION.**

(Acts 1913, p. 37, Sec. 6641b.)

**255. Establishment of schools—How maintained.** Under Act, 1913, provisions are made for the establishment in townships of vocational schools, as follows:

Any school city, town or township may through its board of school trustees or school commissioners or Township Trustee, establish vocational schools or departments for industrial, agricultural and domestic science education in the same manner as other schools and departments are established and may maintain the same from the common school funds or from a special tax levy not to exceed 10 cents on each \$100 of taxable property, or partly from the common school funds and partly from such tax. School cities, towns and townships are authorized to maintain and carry on instruction in elementary domestic science, industrial and agricultural subjects as a part of the regular course of instruction.

(Section 6641d.)

**256. When townships may join in maintenance.** Two or more school cities, towns or townships or combinations thereof, may co-operate to establish and maintain vocational schools or departments for industrial, agricultural or domestic science education or in supervising the same, whenever the school board or Township Trustees of such school cities, towns or townships shall so determine and apportion the cost thereof among the cities, towns and townships co-operating. Whenever such co-operative schools or departments have been determined upon by any school cities, towns or townships, or combination thereof, the presidents of the school boards of the cities or towns and the Township Trustees of the townships co-operating shall constitute a board for the management of such school or department, such board may adopt for a period of one year or more, a plan of organization, administration and support for such school or department and the plan, if approved by the state board of education, shall constitute a binding contract between cities, towns and townships entering into a co-operation to support such schools and courses which shall be cancelled or annulled only by the vote of a majority of the school boards or Township Trustees of such school cities, towns or townships and the approval of the state board of education.

(Section 6641i.)

**257. How advisory committees shall be appointed.** Boards of education or Township Trustees administering approved vocational schools and departments for industrial, agricultural or domestic science education, shall, under a scheme to be approved by the state board of education, appoint an advisory committee composed of members representing local trades, industries and occupations. It shall be the duty of the advisory committee to counsel with and advise the board and other school officials having the management and supervision of such schools or departments.

(Sections 6641k and 6641o.)

**258. Compulsory attendance—Fourteen to sixteen years—Reimbursement.** In case the board of education or Township Trustee of any city, town or township have established approved vocational schools for the instruction of youths over fourteen years of age who are engaged in regular employment, in part-time classes, and have formally accepted the provisions of this section, such board or Trustee are authorized to require all youths between the ages of fourteen and sixteen years who are regularly employed, to attend school not less than five hours per week between the hours of 8 a. m. and 5 p. m. during school term.

Any school city, town or township having claims for reimbursement against the State under the provisions of this act shall present the same to the state board of education on or before July 1st of each year immediately following the completion of the work for which they are entitled to reimbursement from the State. The board shall if they approve the claim authorize its payment by the auditor of state who shall thereupon draw his warrant on the treasurer of state for the payment of the amount due such school city, town or township, from the fund provided in this act.

#### SCHOOLS—AGRICULTURE AND DOMESTIC SCIENCE.

(Acts 1913, p. 109, Sec. 6623h.)

**259. Procedure for the establishment of—Petition—Levy.** Whenever twenty-five (25) per cent. of the legal voters of any township, in the State of Indiana, wherein is situated a township high school, shall petition the Township Trustee, of such township, for the erection, construction and equipping of a room or building upon the grounds or real estate upon which such high school is situate, in which to teach and instruct the students of such township in the arts of agriculture, domestic science, or physical or practical mental culture, and in which to hold school or township entertainments, or to be used for township purposes, the Township Trustee, with the concurrence of the advisory board of such township, shall be authorized and empowered to provide such room or building, as may best suit such needs in such township, by erecting, building and equipping such room or building, as aforesaid, to meet the requirements and necessities therefor.

(Section 6623i.)

**260. Buildings—Issue of bonds—Limitation.** For the purpose of raising funds for the building and construction of such room or building, as is provided in section 1 of this act, the Township Trustee of such township is hereby authorized and empowered, with the concurrence and sanction of the advisory board of such township, to issue and sell the bonds of such township in an amount sufficient to pay for the construction and equipping of such room or building, and to levy a tax on the taxable property of such township in an amount sufficient to discharge and satisfy such bonds so issued and sold; provided, such bonds shall be in equal series, and shall fall due, one each year, for



a period of ten (10) years: Provided, further, That an amount not exceeding one (1) per cent. of the total amount of taxable property of any township may be used and expended for the purpose of carrying out the provisions of this act.

(Section 6623j.)

**261. Duty of Trustee—Maintenance—Tax levy.** The Township Trustee, of any township, in the State of Indiana, shall, by the provisions of the act being first complied with, shall cause such room or building to be constructed and equipped for the teaching and instruction of agriculture science, domestic science, physical culture, practical mental culture, or in which to hold any school or township entertainments, or for other township purposes, may, and he is hereby authorized and empowered to maintain such room or building, for the purpose aforesaid, and to make a levy of taxes, on the taxable property of such township, sufficient to raise the necessary funds with which to maintain such room or building, and to conduct therein the courses of instruction mentioned herein.

#### TEACHERS—EMPLOYMENT.

(Acts 1884, p. 30, Sec. 6592.)

**262. Qualifications of teachers—Employment and dismissal.** Trustees shall employ no person to teach in any of the common schools of the State of Indiana, unless such person shall have a license to teach, issued from the proper state or county authority, and in full force at the date of the employment. Any teacher who shall commence teaching any such school without a license, shall forfeit all claim to compensation out of the school revenue for tuition for the time he or she teaches without such license; but if a teacher's license shall expire by its own limitation within a term of employment, such teacher may complete such term of employment within the then current year. The said trustee shall not employ any teacher whom a majority of those entitled to vote at school meetings have decided at any regular school meeting, they do not wish employed; and at any time after the commencement of any school, if a majority of such voters petition such Trustee that they wish the teacher thereof dismissed, such Trustee shall dismiss such teacher, but only upon due notice, and upon good cause shown; but such teacher shall be entitled to pay for services rendered.

#### TEACHERS—EMPLOYMENT OF.

(Acts 1893, p. 34, Sec. 6593.)

**263. Terms for which teachers may be employed—Contracts—Trustee's liability.** After the passage of this act it shall be unlawful for any Township Trustee to contract with any teacher to teach in any common school if the actual term of service of such teacher under such contract does not begin before the expiration of the term of office of such Trustee. Every contract made in violation of the provisions of this section shall, as to the township represented by such



Trustee, and the school fund thereunto belonging, be absolutely void; but such Trustee shall be personally liable to such teacher for all services rendered under such contract, and for all damages which he may sustain by reason thereof.

#### TEACHERS—CONTRACTS TO BE IN WRITING.

(Acts 1899, p. 173, Sec. 6594.)

**264. Contracts to be in writing.** All contracts hereafter made by and between teachers and school corporations of the State of Indiana shall be in writing, signed by the parties to be charged thereby, and no action shall be brought upon any contract not made in conformity to the provisions of this act.

#### TEACHERS—RECORD OF CONTRACTS.

(Acts 1899, p. 173, Sec. 6595.)

**265. Trustees' duties as to record of teachers' contracts.** For the purpose of carrying this act into effect the School Trustees of the several school corporations of this State shall provide a public record of uniform blank contracts to be carefully worded under the direction of the superintendent of public instruction, and cause such contracts to be signed therein, which record shall be deemed a public record, open to inspection by the people of their several school corporations.

#### TEACHERS—MINIMUM WAGES.

(Acts 1913, p. 104, Sec. 6599.)

**266. Acts 1913—Minimum wages for teachers.** The daily wages of teachers for teaching in the public schools of the State shall not be less, in the case of beginning teachers, than an amount determined by multiplying two and one-half cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience for one school year of not less than six months, the daily wages shall be not less than an amount determined by multiplying three cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience for three or more school years of not less than six months each, the daily wages shall be not less than an amount determined by multiplying three and one-half cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience of five or more school years of not less than six months each, the daily wages shall be not less than an amount determined by multiplying four cents by the general average given such teacher on his highest grade of license at the time of contracting. All teachers now exempt from examination shall be paid, as daily wages for teaching in the public schools, not less than an amount determined by multiplying three and one-half cents by the general average of scholarship and success given such teacher: Provided, That the grade of scholarship accounted in each case be that given at the teacher's

last examination, and that the grade of success accounted be that of the teacher's term last preceding the date of contracting: and, Provided further, That two per cent. shall be added to the teacher's general average of scholarship and success for attending the county institute the full number of days, and that said two per cent. shall be added to the average scholarship of beginning teachers.

#### **TEACHERS—PAYMENT AT LESS THAN MINIMUM.**

(Acts 1907, p. 146, Sec. 6601.)

**267. Penalty for Trustee to pay less.** If any school officer shall pay to any teacher for school services at a rate less than that fixed by the minimum wage act, he shall be fined in any amount not exceeding \$100.00 and shall be liable in a civil action for wages to such teacher at the rate provided in this act, which may be recovered by such teacher, together with an attorney's fee of \$25.00, in any court of justice of competent jurisdiction.

#### **TEACHERS—SPECIAL EXAMINATION.**

(Acts 1865, p. 143, Sec. 6603.)

**268. When Trustee may require special examination.** If persons attached to and forming a school district shall, at a school meeting, designate other branches of learning than those required by law to be taught, which they desire to have taught in their school, the Trustee in employing a teacher for said school shall require said teacher to be examined as to his qualifications to teach the branches so designated.

#### **TEACHERS' INSTITUTES.**

(Acts 1915, p. 555, amending Sec. 6637.)

**269. Teachers required to attend institute—Conditions.** At least one Saturday in each month during which public schools may be in progress shall be devoted to township and city institutes, or model schools for the improvement of teachers; and two Saturdays may be appropriated, at the discretion of the Township Trustee of any township or the Board of School Trustees or board of school commissioners of any city. Such institute shall be presided over by a teacher, or other person, designated by the Trustee of the township, or by the city superintendent or other person designated by him. The Township Trustee, Board of School Trustees, or board of school commissioners shall specify, in a written contract with each teacher, that such teacher shall attend the full session of each institute contemplated herein, or forfeit one day's wages for every day's absence therefrom, and for each day's attendance at such institute each teacher shall receive the same wages as for one day's teaching: Provided, That no teacher shall receive such wages unless he or she shall attend the full session of such institute and perform the duty or duties assigned: and, Provided, The provisions of this act shall not apply to school teachers who are engaged in teaching school on Saturdays.

(Acts 1911, p. 666, Sec. 6640a.)

**270. Adjourning schools—Pay of teachers.** The school board of any city or town, and the Township Trustee of any township, may adjourn the schools of such city, town or township in order to allow teachers to attend sessions of schools or institutes of agricultural instruction held in the county, and the meetings of any teachers' associations, and to visit model schools under the direction of Trustees or Boards of Trustees and shall pay such teachers a wage for the time spent equal to the per diem of such teacher: Provided, That not more than three days shall be allowed in any one year.

#### **SCHOOLS—TOWNSHIP HIGH SCHOOLS—HOW ESTABLISHED.**

(Acts 1913, p. 331, Sec. 6584a-b.)

**271. How to be maintained in townships of \$600,000 valuation.** In each township having an assessed valuation of \$600,000 of taxable property and wherein there is not situated a city or town maintaining a high school, and wherein for each of the two years last past there have been eight or more graduates of the township elementary schools, residing in such township, the Trustee may establish and maintain a high school or a joint high school and elementary school and employ competent teachers therefor.

In such township having eight or more elementary graduates, where there is no high school within three miles of its boundary line, the Trustee shall establish and maintain therein a high school and employ competent teachers therefor.

(Acts 1913, p. 331, Sec. 6584a.)

**272. Petition of majority of parents, guardians and heads of families.** Whenever a majority of parents, guardians, heads of families or persons having charge of children, who were enumerated for school purposes in said township at the last enumeration, petition the Trustee of said township to establish and maintain a high school or a joint high school and elementary school, said Trustee shall establish and maintain such a school petitioned for.

(Acts 1913, p. 331, Sec. 6584c.)

**273. Power of Trustee to locate—Appeal to county superintendent—Decision final—Qualifications of pupils.** The location of such high school shall be determined by the Trustee.

When ten or more persons who are parents, guardians, heads of families or persons who have charge of children who are graduates from the elementary schools and who were enumerated, petition for another location than that determined upon by the trustee, an appeal to the county superintendent is given.

The county superintendent shall thereupon determine the location of the high school building, and his decision shall be final, and the Trustee shall proceed in the execution of the provisions of the act.

**SCHOOLS—HIGH SCHOOL DISTRICT.**

(Acts 1911, p. 475, Sec. 6623b.)

**274. High school district—Township joining with town or city.** Any city or incorporated town located in any township or townships in this State and which maintains or may hereafter establish and maintain a regularly commissioned high school, easy of access and which meets the requirements for high school pupils, may establish and maintain jointly with any such township or townships contiguous thereto or any part thereof and any incorporated town located therein, a high school which will furnish adequate accommodations for the high school pupils in the territory included and the same shall be constituted and known as a high school district.

(Section 6623b.)

**275. District—Determining the territory—Joint high school.** School commissioners, Boards of School Trustees, Township Trustees or other school officials interested may meet and determine the territory to be included in such high school district; make provisions for ample school building or buildings and equipment, and provide for the maintenance and support of such high schools as herein provided.

**275a. JOINT TOWNSHIP HIGH SCHOOLS.**

(Acts 1915, p. 580.)

In two adjoining townships, in any county in this State, having a joint assessed valuation of more than seven hundred and fifty thousand dollars (\$750,000.00) of taxable property, and wherein there is not now established, in either of said adjoining townships, or in any town or city in either of said adjoining townships, a separate high school, and in which there is not now established a joint high school for the use of said adjoining townships, and wherein, for each of the two years last past, there have been eight or more graduates of the township elementary schools residing in each of said adjoining townships, the Township Trustees of said adjoining townships, whenever at least one-third or more of the parents, guardians, head of families, or persons, having charge of children, who were enumerated for school purposes in said township, at the last preceding enumeration, petition the Trustees of said adjoining townships, to establish, erect and maintain, a joint high school building and high school, at some point within said adjoining townships, to be set out and designated in said petition, shall establish, erect, and maintain such joint high school building and high school within said adjoining townships as petitioned for, and employ competent teachers therefor.

**CONTRACT FOR SCHOOL FACILITIES.**

(Acts 1915, p. 158, amending Sec. 6623c.)

**276. School officials may contract for accommodations—Board of control.** The school officials of any such township, townships and incorporated towns may authorize and enter into contract with the school



commissioners or Board of School Trustees of any such city or incorporated town to provide such high school accommodations for a part or all of their respective townships or town corporations by the purchase of grounds, erection of a building or buildings or by making repairs of present building or addition thereto, and by equipping the same in accordance with existing laws governing cities and towns in such procedure including the issuing of notes or bonds of their respective corporation and the payment of the same: Provided, That the officials of the several school corporations composing such high school district may by contract provide for a board of control for such high school or schools consisting of the Township Trustee of each township and the president of the board of school commissioners or School Trustees of each city or town included in such high school district which board of control shall have full control and management of such school or schools as may be established or maintained by such high school district each member being entitled to an equal vote in such control and management: and Provided, That the provision for such board of control shall not be effective in any high school district established by virtue of this law, except in such high school districts as shall contract for such board of control as herein provided.

**Note:** It is believed that the school authorities in such high school districts had no power to make contracts for the control or management of the schools prior to the amendment of 1915, but that the officials of the parent corporation in which such schools are located, had the control and management, and will have such control until contracts as provided in the amended act shall be made.—Editor.

Chapter 80, Acts 1915, p. 158, amends and supersedes Chapter 13, Acts 1915, p. 29.

### EXPENSES—APPORTIONMENT.

(Section 6623d.)

**277. Expenses—Apportionment—Estimates.** The school commissioners or Board of School Trustees of such cities and towns shall prepare and submit annually, prior to the time for the levy of school taxes for any year, to the school officials of all interested school corporations of said high school district, an itemized statement of the cost of all expenditures for improvements and maintenance of such high school or schools for the previous year, with an itemized estimate of the cost of all proposed improvements, changes, equipment and expenses incidental thereto for the ensuing year, including any notes bonds or interest thereon falling due and issued under any contract made under the provisions of this act, and such school officials shall meet and determine the expenditures needed and the total amount required for any unpaid obligations, improvements or requirements for the ensuing fiscal year of such high school. The total amount shall then be apportioned among the several school corporations affected or benefited thereby in proportion to the last official assessed valuation in each of said school corporations or parts thereof in said high school district. Said officials of each school corporation shall pay out of the school funds of the township the amount apportioned to their respective school cor-

porations for the maintenance of such high school and may issue notes or sell the bonds of their respective corporations for any permanent improvements in such high school or pay the same out of the special school fund in their discretion. The school corporation shall assess such sum on the entire property within the school corporation or against the property of that part of the school corporation directly benefited.

(Section 6623e.)

**278. Warrants—Fund must not be diverted.** The amounts due from any school corporation shall be paid on warrants issued by the order of the proper officials of such school corporation to the treasurer of the board of school commissioners or Board of School Trustees of such city or town and such funds shall be used only for said high school purposes, and no other.

(Section 6623f.)

**279. How township may withdraw from co-operative high school.** If any school corporation shall at any time wish to withdraw from said high school district and establish a separate high school, they shall receive from the school corporations remaining in the said district an equitable amount for their interest in the property of said high school district, to be determined by a board consisting of the county superintendent, county auditor and county assessor. The amount thereof shall be paid to the corporation and the sum shall be assessed against the remaining school corporations as other amounts are assessed.

(Section 6623g.)

**280. Act declared to be supplemental one.** It is the intent of this act that its provisions shall be additional to any statutory provisions for the establishment and maintenance of high schools. This act shall not therefore be construed to repeal, in whole or in part, any other statute having to do with the establishment, maintenance or support of public high schools, except as herein provided.

#### JOINT SCHOOLS AND HOUSES.

(Acts 1901, p. 53, Sec. 6620.)

**281. When Trustee may join with adjacent township.** The Trustee of two or more adjacent school corporations may establish a new school district and build a schoolhouse therein at the joint expense of their several corporations, whenever, in their judgment, it shall appear necessary for the better accommodation of the people of their respective corporations. Provided, That such necessity must be set forth in a petition of the persons making the request, such petition to be presented to each of said Trustees. And said Trustees shall, at the time agreed upon by them, not less than ten days nor more than thirty days from the time of receiving such petition, hold a joint meeting for the purpose of declaring whether such petition shall be granted, and take further action as the case may require.

(Acts 1901, p. 53, Sec. 6621.)

**282. Expense of establishing, how borne—Control of school.** Each corporation shall bear such part of the expense of establishing such joint district school as the number of children of school age residing in each corporation and attaching themselves to said new district at the time of the formation, bears to the whole number of children of school age who are attached to said district at its formation and each corporation shall assume its share of the debt so incurred. But when said school shall be established it shall be controlled by the corporation in which it is established in the manner already prescribed by law.

#### **SCHOOLS—BUILDINGS IN TOWNS—USE BY TOWNSHIP.**

(Acts 1911, p. 141, Sec. 6614a.)

**283. When free use of building is offered—Conditions.** Whenever the owner of a school building located in an incorporated town tenders the use of the same for school purposes for the school year to the Trustee of the township within which it is located without any charge or expense other than keeping the same in proper repair and good condition during such school year, such Trustee if he deem the use of school building suitable and convenient may use the same for school purposes in the same manner as township school buildings are now used and the employment and paying of teachers, the admission of pupils, and conducting school in said building, and the care thereof shall be governed by the laws applicable to township schools located without such towns.

#### **JOINT SCHOOLHOUSE—EXPENSE OF MAINTENANCE.**

(Acts 1901, Sec. 6622.)

**284. How expense of maintenance to be apportioned.** The children of school age resident in a joint district already established or hereafter established shall be admitted to the joint school maintained therein, without transfer certificates or tuition charge. The trustees of the various corporations from which the joint district is made shall pay such part of the cost of maintaining the joint school as the number of pupils enrolled from each corporation bears to the whole number enrolled in the joint school.

#### **JOINT GRADED SCHOOLS.**

(Acts 1873, p. 68, Sec. 6623.)

**285. When joint graded schools may be established.** The School Trustees of two or more distinct municipal corporations for school purposes shall have power to establish joint graded schools, or such modifications of them as may be practicable, and provide for admitting into the higher departments of their graded schools, from the primary schools of their corporations, such pupils as are sufficiently advanced for such admission. Said Trustees shall have the care and management of such graded schools, and they shall select the teachers therefor. They shall have power to purchase suitable grounds for such



graded schools, and erect suitable buildings thereon; and the title to all such property, acquired for such purposes, shall vest jointly in the corporations establishing the graded schools.

#### JOINT SCHOOLHOUSE FOR SEVERAL TOWNSHIPS.

(Acts 1877, p. 125, Sec. 6617.)

**286. Joint schoolhouse—Two or more townships.** The Trustees of two or more adjacent counties or townships may establish a new school district, and build a schoolhouse therein at the joint expense of their several townships, whenever, in their judgment, it shall appear necessary for the better accommodation of the people of their respective townships: Provided, That such necessity must be set forth in a petition of the persons making the request—such petition to be presented to each of said Trustees. And said Trustees shall, at the time agreed upon by them, not less than ten days nor more than thirty days from the time of receiving such petition, hold a joint meeting, for the purpose of declaring whether such petition shall be granted, and take such further action as the case may require.

#### JOINT DISTRICTS—COST OF ERECTING.

(Acts 1877, p. 125, Sec. 6619.)

**287. How cost of erection shall be apportioned.** Each township shall bear part of the expense of establishing such joint district school as the number of children of school age residing in each township and attaching themselves to said new district at the time of the formation, bears to the whole number of children of school age who are attached to said district at its formation; and each township shall assume its share of the debt so incurred. But when said school shall be established, it shall be supported by the township in which it is established, in the manner already prescribed by law.

#### JOINT DISTRICTS, SCHOOLHOUSE FOR.

(Acts 1903, p. 431, Sec. 6618.)

**288. Duty of Trustee when funds insufficient.** Whenever a majority of the school patrons of two or more adjoining school districts, located in two or more adjacent townships, may heretofore have petitioned, or whenever they may hereafter petition, in substantial compliance with the provisions of section 1 of an act of the general assembly of the State of Indiana, in force March 6, 1877, being section 6617, Burns' revised statutes 1914, to the Trustees of said townships for the establishment of a new school district and the erection of a joint school house for a joint graded school, at the place named in said petition, for the accommodation of the school children residing in said school district, and if said Trustees shall have granted, or may hereafter grant, the prayer of said petition, or if an appeal may have been taken, or may hereafter be taken, to the county superintendent, from the decision of said Trustees, refusing to grant the prayer of said petition, under the provisions of section 6667, Burns' revised statutes



1914, and if on such appeal said superintendent may have granted, or may hereafter grant, the prayer of said petition, then, in either of such events, an emergency shall thereby exist for the procurement of a site and the erection of such schoolhouse, as contemplated by section 9595, Burns' Revised Statutes 1914, and if there is not sufficient money on hand for the purpose, the Trustees and the advisory boards of said townships shall proceed to raise the money necessary to meet such emergency, as provided by said section, and shall also procure the necessary site for the erection of said schoolhouse and erect and maintain the same as provided by law.

#### **SCHOOLS—CITY AND TOWNSHIP—JOINT GRADED SCHOOL.**

(Acts 1913, p. 911, Sec. 6622a.)

**289. When matter is to be settled by an election.** Whenever twenty-five (25) legal voters, residing in any incorporated town or city of the fifth class and twenty-five (25) legal voters residing in the same township, but outside said town or said city, shall petition the school board of said town or said city and the Township Trustee of the township in which said town or said city is located to erect a joint schoolhouse for a joint graded school, or a joint high school, or both, or such modification thereof as may be practicable, it shall be the duty of the school trustee of said town or said city and of said Township Trustee or a majority of them to call elections of the voters of the town or city and the voters of the township residing outside of such town or city respectively, for the purpose of determining whether a majority of the legal voters of each school corporation are in favor of building said joint schoolhouse. Such elections of the legal voters of the townships outside of the town or city shall be separate and independent. Said Trustees shall, upon the filing of said petitions, give notice by publication, for three successive publications, in a weekly newspaper, if any, published in said township, and if no weekly is published in said township, then in the nearest newspaper published in said county, that on a day to be named by said Trustee the polls will open at the several voting places in said township named in the petition for the purpose of taking the vote of the legal voters thereof upon whether such joint schoolhouse shall be built; said elections shall be held not less than ten (10) days nor more than twenty (20) days after the last publication of said notice.

#### **BALLOTS—ELECTION METHOD.**

(Acts 1911, p. 463, Sec. 6622b.)

**290. Prescribed ballots—Method of the election.** On the day named in said notice such polls shall be opened and the votes of the legal voters shall be taken upon the question of building such schoolhouse, and said election shall be governed by the general laws of the State, so far as they may be applicable except as otherwise provided herein. Said Trustees shall constitute the board of election commissioners and they shall cause to be prepared and distributed proper ballots. There shall be printed on the ballots two squares and words as follows:

☐ YES For building the schoolhouse.

☐ NO For [Against] building the schoolhouse.

Each voter desiring to vote for the building of such joint schoolhouse shall make a cross with a pencil in the square containing the word "yes," and each voter desiring to vote against the building of such joint schoolhouse shall make a cross in the square containing the word "no." Said Trustees shall appoint inspectors, judges and clerks for such elections. The votes cast at such elections shall be canvassed at the office of the Township Trustee on the day following said election at 10 o'clock a. m., and a certificate of the votes cast for and against the building of said schoolhouse shall be filed with said Trustees. If a majority of the votes cast at each of such elections are in favor of the building of such joint schoolhouse, said Trustees of said school corporations shall proceed to build the same, and the township advisory board shall make the proper appropriation for the proportionate part of the cost of said building to be paid by said township. Said Trustees shall provide a suitable site for said building.

#### JOINT OWNERSHIP OF PROPERTY.

(Acts 1913, p. 911, Sec. 6622d.)

**291. Joint ownership of property—Control and management.** Any schoolhouse constructed under the provisions of this act shall be joint property of said corporations, and such property shall be owned by such corporations in proportion to the amount paid by each for the construction of the same, and said school shall be open to all pupils residing in said town or city or township free of tuition. The trustee of said school corporations shall have the control and management of said schoolhouse and school and the right to employ teachers in such school. Neither of said corporations shall ever be deprived of its ownership in said building except upon full compensation for its proportionate interest in the same.

#### COST OF CONSTRUCTION—TAX LEVY—BONDS ISSUED.

(Acts 1913, p. 911, Sec. 6622c.)

**292. How cost of erection shall be determined—Bonds—Levy.** The cost of the construction of such joint schoolhouse shall be borne by such school corporation in proportion to the total amount of taxable property in each of such school corporations. If such school town or school city shall not have money available to pay for its proportionate part of the cost of the construction of said joint schoolhouse, the school Trustee of such town or such city may issue warrants or bonds of such corporation to meet such proportionate cost. If there are not sufficient funds available out of the annual township levy to meet the proportionate cost of said schoolhouse to be paid by such township, then the township advisory board of such township shall order bonds or warrants to be issued, and the Township Trustee shall issue township war-

rants or bonds to meet such proportionate cost to be paid by such school township. Such bonds authorized by this act shall be payable in such amounts and at such times as the Trustees of said corporations respectively may determine and shall bear such rate of interest as may be determined not exceeding four and one-half ( $4\frac{1}{2}$ ) per cent.

#### **TRUSTEE CAN NOT CHANGE OR VACATE HIGHWAY.**

(Acts 1859, p. 220, Sec. 9582.)

**293. The old law of 1852 repealed.** Under the law of 1852 (R. S. 1, p. 495), three Township Trustees were annually elected, together with a township treasurer and clerk. The Trustees were authorized to lay out, change and vacate highways when wholly within the township. These were given the name of township roads. A new law was enacted in 1859, p. 220 which is still in force, providing for one Trustee only. Under the same act the authority was vested in the board of commissioners, alone, to lay out, change and vacate highways, taking that power from the Trustee.

**Note:** For definition of "township road", see Section 7792 Burns' R. S., Section 328 this book.

#### **HIGHWAYS.**

(Acts 1905, p. 521, Sec. 7651-7652.)

**294. Trustee's notice to his supervisor.** New highways, changes and vacations of highways, are made under the jurisdiction of the board of county commissioners only, by petition, view, review and order of such new highway, changes or vacation, and its order made of record by the board.

It then becomes the duty of the auditor to give notice of the action of the board to the interested Township Trustee, giving a complete and accurate description by courses and distances of such new road, change and vacation, together with its width; who shall cause his road supervisor to be notified that a new road or change in road may be properly worked according to law.

#### **HIGHWAYS—BRIDGES—ROAD FUND.**

(Acts 1913, p. 609, Sec. 3823a.)

**295. Repairs or erection costing \$100 or less—New law 1913.** Under act of 1913, all bridges erected or repaired on public highways when the cost of erecting or repairing shall not exceed \$100, shall be built by the Township Trustee and paid out of the township road fund.

#### **HIGHWAYS—CONVICT LABOR EMPLOYED.**

(Acts 1913, p. 233, Sec. 9852a-d.)

**296. 1913 law—Convict labor on highways.** By the act 1913, the Boards of Trustees of the Indiana Reformatory and Indiana State Prison, were authorized to work any number of inmates upon the public roads of the State.



Section three provides that boards of commissioners and Township Trustees have power to work the inmates upon the highways of the counties and township, and with the consent of the county council and advisory boards to enter into agreement with such state board for such purpose. Power is given the local authorities to purchase all material necessary to perform such work on the highways, and to employ expert superintendents of such work.

#### HIGHWAYS—TOWNSHIPS—SUPERVISORS ELECTED—DUTIES.

(Acts 1913, p. 862, Sec. 7760 to 7792.)

**297. 1913 law regulating number of road supervisors—When Trustee acts—New highway law—Sec. 1, 1913 Act as amended, Acts 1915, page 101.** The qualified voters in each road district of the several townships of the several counties in the State shall, on the second Saturday after the first Monday in December, 1916, and every two (2) years thereafter, elect a supervisor who shall hold his office for the term of two (2) years and until his successor is elected and qualified. Road districts shall not be held to include any part or parts of cities or incorporated towns that may be in the township in which such road districts are located. The Township Trustee of each township shall on or before the first Monday in December, 1916, and every two (2) years thereafter, post up or cause to be posted, in at least two (2) public places in each road district of his township, written or printed notices of an election of supervisor of such road district, giving therein the place, day and hour at which such election is to be held. The day and hour of such election shall be the same in each road district of the township. The place of such election shall, if practicable, be a schoolhouse, located in the road district. The Township Trustee shall act as inspector of the election in the road district in or nearest to which he resides, and shall name from among the qualified voters present two clerks, who shall, if possible, not both be of the same political party. Such clerks, with the Trustee, shall form an election board to judge of the qualifications of voters, and shall collect or receive and shall count the ballots cast. If one or more members of the election board, or one or more freeholders among the qualified voters present shall challenge any one offering to vote, and declare under oath that such an one is not entitled to vote, giving reasons for such declaration, then, after the one offering to vote and challenged as aforesaid shall have been given an opportunity to reply and to declare under oath his qualifications, if such one or more members of such election board or such one or more freeholders among the qualified voters present persist in their challenge and declarations, the one thus challenged shall not be allowed to vote unless a freeholder among the qualified voters present shall declare under oath that such challenged voter is entitled to vote in that road district at that election. For the election of supervisor in each road district of his township, other than the one in or nearest to which he resides, the Trustee shall name an inspector of election, and such inspector shall name two clerks, of different political parties, if possible, from among the qualified voters



present. Such inspector shall be a freeholder in the road district in which the election is held. The inspector and the two clerks shall constitute an election board to judge, as heretofore provided, of the qualifications of voters, and to receive or collect and to count the ballots cast. Such inspector or trustee shall be authorized to administer all necessary oaths in relation to such election. The inspector and clerks provided for in this act shall serve without pay, but the Township Trustee shall be entitled to his regular pay for one day for the day on which the notices aforesaid are posted up and for one day for the day on which he files reports of election of supervisors with the auditor of the county. The Trustee shall provide paper for ballots and for the clerks in their count of such ballots. The Trustee or inspector shall be present promptly at the place and hour named in the notice of election, and if the said Trustee or inspector shall not appear within fifteen minutes after the time set, then the qualified voters present shall select a freeholder from their number as inspector. The polls shall be opened in the afternoon at the hour of two (2) o'clock, and shall continue open until five (5) o'clock in the afternoon, if all voters present have voted, or have been given an opportunity to vote, provided that the election board may close the polls sooner if all voters present have voted or have been given an opportunity to vote, and no vote has been cast for ten (10) minutes. Immediately upon the announcement that the polls are closed, the election board shall proceed to count the ballots, and during the count all voters shall be excluded from the room in which the count is made excepting only the election board and two watchers, who may be named, one by each of the clerks. The person receiving the highest number of votes cast shall be deemed to be elected. Only those ballots shall be counted which contain the name of but one (1) person, and mistakes in spelling or in initials shall not prevent the ballot from being counted where the intent of the voter is evident; all counted or uncounted ballots shall be preserved under the seal of the Trustee until June following the day of election. Ballots may be either written or printed. When the count is completed the Trustee or inspector shall at once announce the result and the Trustee shall issue a certificate to the person so elected. The inspector of each district other than that of which the Township Trustee is inspector shall file with such Trustee the report of election in his district, together with all papers and ballots. The Trustee shall within three (3) days file with the auditor of such county a report of all elections of supervisors held in such Trustee's township, which report shall be certified to, in the case of each road district, by the members of the election board in such district. Each supervisor shall at the time of his election or appointment be a qualified voter of the road district for which he is elected or appointed. In all townships in this State in which the township roads do not exceed ten (10) miles in length, the Township Trustee shall be ex-officio road supervisor, and in no case shall there be to exceed four (4) supervisors in any one township in this State. Such supervisor shall take an oath, before entering upon the discharge of his duties, for the faithful performance thereof, and give a bond with surety to be approved by the Township

Trustee, and conditioned for the faithful discharge of his duties, in the sum of not less than two hundred (\$200.00) dollars, which bond shall be deposited with the Township Trustee: Provided, That if any person elected supervisor shall be unable to give such bond, such inability shall be a defense to the collection of the forfeiture herein provided for, and the Township Trustee shall appoint some one else as supervisor who shall serve until his successor is elected and qualified. Each road supervisor shall receive for his services actually performed the sum of twenty-five cents (25c) per hour for not to exceed fifty (50) days except that in the event of the election of but one (1) supervisor for his township, the Township Trustee may extend the time said supervisor shall work to not more than 120 days in any one year to be paid out of the township treasury. Before receiving such pay he shall file a sworn statement with the Trustee of the township, which statement shall specify the days and roads upon which such services were performed. Upon failure or neglect to carry out or perform such duties as are imposed upon him, any supervisor shall be liable upon the bond hereinbefore provided for, or he may be removed from office by the Township Trustee. The Township Trustee shall fill all vacancies for the unexpired term, and shall notify such appointee of his appointment within three (3) days thereof. Such supervisors shall have charge of and work and keep in good repair the roads of their respective districts. They shall be subject to the control and direction of the township trustee, who shall see that their duties be faithfully performed, and who shall see that the roads of the townships are dragged whenever the weather conditions make such work advisable. He shall also call out all persons in such district liable to work on highways therein, superintend the labor thereon, see that the same is faithfully performed and report to the trustee all fines and commutation moneys due such district and the same shall be collected by such Trustee, and whenever such Trustee shall deem it necessary he may make any change in the road districts that may subserve the public interest. On dividing his township into road districts, or where any change is made therein, such Trustee shall record a plat thereof in the highway record of his township, which shall show the roads and parts of roads belonging to each road district.

**Note:** The material changes from the 1913 law, which is in effect until the second Saturday after the first Monday in December, 1916, are: the limited number of days which the supervisor shall work is changed from sixty to fifty days, and the date for election of supervisor is changed from the general election in November to the second Saturday after the first Monday in December, biennially.

**297a.****WEED-CUTTING ON HIGHWAYS.**

(Acts 1915, p. 622, repealing Sec. 7807-7809.)

Landowners, through or along whose lands highways run, are required to cut down and destroy briars, burrs, docks, willows, sumac, reeds, cattails, tall grass, shrubs and all other growths which obstruct the view of such highways along, through, or contiguous to the lands

of such owners. Such work must be done between June 15th and September 1st of each year, and under the direction of the road supervisor. The landowner is allowed \$1.50 per day of eight hours for such work, and a proportionate sum for each fraction thereof, for the time necessarily employed thereat, to be credited upon his road taxes as other road work is credited.

The above provision applies to "township roads" only, and does not apply to free gravel or macadam highways, which are under the supervision of the county highway superintendent.

The act of 1915 repeals the old weed statutes, being sections 7807, 7808 and 7809 Burns' 1914.

The supervisor may upon complaint by any interested person, or upon his own motion, investigate to determine whether any landowner in his road district has complied with the requirements of the law. If any landowner fails to cut and destroy such growths within the time named, the supervisor shall have the work done. In that event, the supervisor shall prepare, sign and certify to the county auditor a statement of the total cost of the work, including the cost of the labor and of the investigation, figured at \$1.50 per day, to be charged against the owner's land as a special weed tax and to be collected at the same time and manner as road taxes.

Any person who violates this law is liable to a fine of not less than \$5.00 nor more than \$10.00 for each separate offense.

**Note:** The road supervisor should issue receipts to the landowner for the work done, to be credited upon the owner's road taxes.

(Section 7761.)

**298. Road tax—Call by supervisor—Who may be called.** Any such supervisor shall call out all able-bodied male persons, except insane, idiotic, deaf and dumb, and blind persons within his jurisdiction and who are over the age of twenty-one (21) years, and under fifty (50) years of age, and not exempt from such labor, during not less than two nor more than four days of each year between the first day of April and the first day of December of each year. The supervisor shall require such persons to work on the highways of such district eight hours each day, and to furnish in such labor any tool that the supervisor may direct, if the demand therefor be a reasonable one. Any person able to perform an ordinary day's labor shall be deemed able-bodied, within the meaning of this act, although the person may be in some respects disabled: Provided, That no person who served in the army or navy of the United States during the war of the Union or the war with Spain or in the Philippine Islands, and who was honorably discharged therefrom, shall be required to labor on the public highways.

(Section 7762.)

**299. Owners of teams—Credit for double time.** Such supervisor may require any person liable to work on such highways who is the owner of an ox, mule, or horse-team, road scraper, road scoop, cart or wagon to furnish the same, and a driver, in such labor on such highways, and such person shall receive credit for two days' labor for each



day's service by such driver and team, and shall be given a receipt by such supervisor accordingly.

(Section 7763.)

**300. Penalty—Supervisor issuing false receipt.** Any road supervisor who shall issue and deliver to any person his receipt, giving credit for work done on highways in his district, when such person to whom, or for whom such receipt is issued, has not actually worked or caused work to be done for the full time that such receipt gives credit for at the rate of eight (8) hours for one day's work or has not paid the commutation money as provided by law, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for every such receipt so issued.

(Section 7764.)

**301. Who may be exempt from road work.** On application to the Township Trustee any person liable to work on the highways may be exempt therefrom, if it be shown that he is unable from bodily infirmities to work thereon and that he is too poor to pay the commutation therefor; also any person who is a bona fide member of a legally organized fire company, located in any city or town in this State. And in such cases the Township Trustee shall execute to such person a certificate which shall, on being presented to the supervisor, entitle him to such exemption.

(Section 7765.)

**302. Cash payment—\$1.50 per day—Exemption.** Any person liable to work on the highways may be exempt therefrom by paying to the supervisor of his road district one dollar and fifty cents (\$1.50) for each day he is liable to work thereon, and in that case he shall receive a receipt therefor from the supervisor. Such supervisor shall be authorized to employ some person or persons to work out such money, at the rate of one dollar and fifty cents (\$1.50) per day, on the roads of his district; or failing to do so, he shall pay over all such money into the township treasury, for the benefit of the road district.

(Section 7766.)

**303. Failure to pay or work—Suit.** Every supervisor, within ten days after warning out the hands liable to work in his district, shall notify the Trustee who shall bring suit before any justice of the peace of the township in which such district is situated, and in the name of such township, against such persons as fail to work or pay over the commutation money therefor; and in such suit it shall be necessary to file only an account stating the number of days which each of such persons so failed to work or pay for, and charging one dollar and fifty cents (\$1.50) per day each therefor; and in case of a recovery against any such defendant, the judgment shall be rendered for one dollar and fifty cents (\$1.50) for every day the defendant so failed, and costs of suit, and no stay of execution or benefit of exemption, valuation or appraisal laws shall be allowed on such judgment. In case any such Trustee shall fail to bring suit, after having been so notified by such



supervisor, he shall forfeit and pay the sum of ten (\$10.00) dollars, to be recovered in an action brought by the prosecuting attorney, before any justice of the peace of the township, in the name thereof; and all the money so recovered under the provisions of this section shall be received and expended under the direction of the Township Trustee by the proper supervisor in the improvement of the highways of his district: Provided, That any such Trustee shall not be required to bring suit against any person from whom there is no probability of collecting, or who, at the time of working, shall be sick or otherwise unable to labor. If such person so temporarily sick or disabled be liable to pay commutation, he shall so pay, or the Trustee shall sue therefor within sixty days. No person able to pay commutation shall be exempt on account of bodily disability.

(Section 7767.)

**304. Eight hours constitutes a day's work—Penalty.** Any person liable to perform labor on the public highways, when notified for such purpose, may appear in person or by an able-bodied substitute, and the person or substitute so appearing shall actually work eight hours each day, under penalties of twenty-five cents for every hour such person or substitute shall be in default, to be deducted by the supervisor from the price of the day's labor.

(Section 7768.)

**305. Faithful performance of labor.** If any such person or his substitute, after appearing shall remain idle or not work faithfully, or shall hinder others from working, such offender shall for every such offense, forfeit the sum of one dollar and fifty cents, to be collected from such person as other fines and forfeitures herein specified, and such person or his substitute shall be discharged by the supervisor without credit for any part of the work he may have done.

(Section 7769.)

**306. Employment of additional labor.** Such supervisor, within ten days after the receipt of any money which he is not required to pay over to the Township Trustee, shall proceed to employ laborers to repair the highways in his district, but shall not pay more to such laborers than is customary in his district for similar services, and such supervisor shall superintend such repairs; but in no case shall such supervisor neglect to repair such highways, and if such labor shall be insufficient therefor, he shall call out the hands in his district to complete such repairing. If any person so called out shall refuse to work, he shall be liable to pay the commutation money therefor, and it shall be the duty of the Trustee to bring suit for the same as provided in section seven (7) of this act. See section 303, this book.

(Section 7770.)

**307. Credit on subsequent labor.** When such extra labor provided for in the next preceding section shall not require all the hands in the district, or an equal amount of labor from each, the supervisor may

assess the same upon such hands as he may deem sufficient, and for the excess of work performed by any one over the average amount performed by all he shall give to each person performing such excess a certificate of the amount thereof, which shall be credited to the holder on account of any subsequent labor to be done by him on the highways in his district.

(Section 7771.)

**308. Material confiscated—Damages—How assessed and paid.** The supervisor, or any other person by his order, may enter upon any land adjoining or near to any highway in his district, and thereupon construct such ditches, drains and dams, and dig and remove such gravel, earth, sand or stone, or cut and remove such wood or trees as may be necessary for the proper construction, repair or preservation of such highways; and the supervisor, together with two disinterested persons, shall proceed at once to the locality and assess such damages in favor of the owner of the lands thereof, as in their judgment seems right and proper, and report the same under oath, within ten days after such assessment, to the Trustee, having first given notice thereof to the party damaged and such Trustee shall pay the damages assessed out of the township treasury. The oath to such appraisers may be administered by the supervisor, and the oath to the supervisor may be administered by the Trustee. No person's land shall be entered when material can be found on the roadway, or convenient in the district on the roadways thereof, nor when drainage can be made on the roadway, at a cost not exceeding the cost and damages of entering upon private lands. In all cases contemplated in this section, demand shall first be made of the owner of the land before entering thereon or taking material. If he assent, he may point out the material and the location from which it is to be taken, and if accessible and fit for the purpose intended, the material shall be there taken. If consent be refused by the owner, the supervisor shall notify such owner of his intention to so enter, for what purpose and for what time, and point out the land to be occupied or the material to be taken. In all assessments of damages the owner shall be notified and have leave to select one appraiser, and shall have notice of the time and place of the meeting of the appraisers, and privilege to offer evidence as to damages at the time of the assessment by the appraisers: Provided, also, That any person aggrieved may appeal from the action of the appraisers to any justice of the peace of the township, by giving notice in writing to the road supervisor. Such notice must be given within ten (10) days after final action by the appraisers, and such person shall give bond within thirty days after final action by the appraisers. Such bond shall be payable to the Trustee, and shall be filed with and approved by the appraisers, and thereupon the papers shall be delivered to the justice of the peace; and such appeal shall be determined as other questions are determined in civil cases before justice of the peace.

(Section 7772.)

**309. Abutting landowner to remove obstructions to highways.** When a public highway, running through or bordering upon a tract

of real estate, shall become obstructed, the owner or occupant of such land shall remove such obstruction as soon as the same shall come to his knowledge, for which the proper supervisor shall allow him a reasonable credit on his liability to work on the highways, unless the obstruction be caused by the act of such owner or occupant, in which case he will be required to remove the same without any credit.

(Section 7773.)

**310. Opening new highway—Ownership and removal of timber—Supervisors.** All trees standing or lying on the land over which any highway shall be laid out, which it shall be necessary to remove in the opening of such highway, shall belong to the owner of such land if he shall remove the same before the supervisor is required to open such highway; but all such trees and down timber, or other material found on such premises, may be taken and used by the proper supervisor for the construction or repair of the highway or of any bridge thereon.

(Section 7774.)

**311. Bridges and culverts—Erection and repair—When by township.** If the Township Trustee of the township where any proposed bridge or culvert is to be located or repaired shall notify the board of commissioners of his county of the necessity of such location or repair, and if in the opinion of the commissioners the public convenience shall require the building or repairing thereof, they shall cause surveys and estimates to be made and provide for the erection of the same: Provided, That if the board of commissioners shall not deem such bridge or culvert of sufficient importance to justify an appropriation from the county treasury for the building or repair thereof, the Trustee of the township in which is located such bridge or culvert may appropriate any part of the road fund in the township treasury for that purpose, if he shall deem it right and expedient to do so.

#### **311a. BRIDGES OVER DRAINS—DRAINAGE DISTRICTS.**

(Acts 1915, p. 245.)

Sec. 34 of the Ballou Drainage Act of 1915, provides that the proper county, township or other corporation, shall build or enlarge, where necessary, bridges over the drains to be constructed under the drainage act, upon the order of the board of supervisors of the drainage district. The act provides that the secretary of the board of supervisors shall give notice to the proper county or township by delivering to the auditor or Trustee of such county or township the order of the board of supervisors of the drainage district declaring the necessity for the construction or enlargement of such bridge. Such bridge must be constructed within 10 days after the drainage ditch shall be completed across the public highway.

**Note:** The question as to the validity of the provision that the drainage district officers may compel counties or townships to build or reconstruct bridges will no doubt be determined by the courts.—The Editor.



## 311b.

## BENEFITS TO HIGHWAYS.

(Acts 1915, p. 266.)

Section 61 of the Ballou Drainage Act provides that benefits to any highway arising from the construction of a ditch, under the above named act, shall be assessed against the proper township, which shall be paid by the trustee out of the township fund.

(Section 7775.)

**312. Preference given to rural mail routes—Emergency fund—Penalty.** Sec. 16. That in addition to the duties now conferred on them by law in respect to the care of highways, it shall be the duty of the board of commissioners, Township Trustees, road superintendents and road supervisors to keep in repair and in passable condition all highways in their respective districts or jurisdictions along or on which United States rural free delivery mail routes have been or may hereafter be established and maintained, and the Township Trustees shall set aside at least five per cent. of the amount of road fund received by them each year as an emergency fund to be used in carrying out the provisions of this act. It shall be the duty of the above named officers in performing their duties in respect to highways to give preference to the highways along or over which such rural mail routes have been or may hereafter be established and maintained. It shall be the duty of such officers to see that such highways are properly drained, are kept free of all obstructions, including snow drifts, and are at all times in condition to be safe and readily passable to ordinary travel. It shall be the duty of said officers, and each of them, upon receiving notice of the defective or impassable condition of any of the highways so used by mail routes above defined at once repair, or cause to be repaired, the said highway or highways. In making such repairs the board may repair bridges or culverts wherever necessary for the purposes of this act, regardless of the fact that there may be no appropriation therefor, and pay for the same out of any moneys in the county treasury not otherwise appropriated [appropriated]. If any member of any board of commissioners, any Township Trustee, road supervisor or superintendent shall fail to repair any such highway within his jurisdiction, or to cause the same to be done, for a period of five days after receiving notice of the defective condition thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not over two dollars (\$2.00) for each day he shall have so failed after receiving such notice.

(Section 7776.)

**313. Expenditure of emergency fund—Five per cent. fund.** The Township Trustee shall order the expenditure of the funds derived from the tax provided for in the last section in the improvement of the highways of his township under such regulations as he may deem expedient for the public interest, and for this purpose shall pay such sums as may be necessary, on the order of the supervisors of the township, for work done by them under his direction. Such order or orders drawn



upon the Trustee shall distinctly state the services performed by the person or persons to whom the order is given.

(Section 7777.)

**314. Road tax—Levy—Work limited to \$20—Balance cash—Road tax list—Duty of auditor.** The township advisory board, on an estimate made by the Township Trustee, shall levy annually on or before the first Tuesday in June a road tax of not more than thirty cents on one hundred dollars (\$100) to be levied according to the amount of real and personal property owned in such township, outside of the corporate cities and towns subject to taxation for road purposes, to be collected as other taxes are collected, except all road taxes are to be collected with the first yearly installment of taxes: Provided, That any person or corporation owing taxes so assessed on real estate shall be permitted to work out the same up to the amount of twenty dollars (\$20.00) as nearly as practicable in the road district in which such real estate lies, and on taxes so assessed on personal property the person owing the same shall be permitted to work out the same up to the amount of twenty dollars (\$20.00) in the district where the owner resides. Said tax to be worked out at the rate of one dollar and fifty cents (\$1.50) per day for each man. That the Township Trustee may, with the consent of the township advisory board, levy an additional tax, not to exceed ten cents on one hundred dollars valuation, to be paid into the county treasury, with the first installment of taxes and to be paid by the treasurer to the Township Trustee, to be expended for the construction and repair of bridges and culverts and for other road purposes. All taxes so assessed on real estate or personal property if not worked out under the provisions of this section shall be paid into the county treasury in cash, as other taxes are paid and shall be paid by the county treasurer to the Township Trustee, to be expended for the construction and repair of roads and bridges within his jurisdiction. It shall be the duty of the county auditor to procure and deliver each year, on or before the 10th of September to the proper Township Trustee, a list of all road taxes assessed on each individual in his township, and the receipt of the supervisor of the proper district for the amount worked out by any tax payer, if not in excess of twenty dollars (\$20.00) shall be taken by the treasurer of the county in payment of so much of said taxes, if presented during the year in which the labor has been performed or the year following upon the performance of said labor. No supervisor shall issue receipt for work performed by himself, except for his own road tax but in no case in excess of twenty dollars (\$20.00) and no county treasurer shall receive the certificate of any supervisor except in payment of taxes on which the work shall be performed: Provided, further, That the road tax assessed on real estate and personal property shall be worked out on or before the first day of December of the year for which the levy was made. All credits allowed by county treasurers for road taxes worked out, upon settlement with the Township Trustee, to be properly distributed and charged, and road supervisors are required to make out and deliver to the Township Trustee on or before the first day of

December of each year, a statement containing a true list of persons, of their respective road districts having worked out their road tax, or any part thereof, during the year, together with the amount worked out by each person. And such supervisors shall likewise file with the Township Trustee, the receipts of all persons who are entitled to credit for road taxes worked out. And the Township Trustee shall, on or before the last day of December of each and every year, file with the county treasurer of the proper county all the receipts for road work that the proper persons may be given credit therefor on the tax duplicate. When demanded by the party working out road tax, the supervisor shall issue to him a road tax receipt which shall be marked duplicate: Provided, That the provisions of this section relative to paying all road taxes in excess of twenty dollars (\$20.00) in cash shall be construed to apply to the current year and shall be in full force and effect from and after the first day of April, 1913.

(Acts 1911, p. 65, Sec. 7778.)

**314a. Redemption of road tax receipts.** That whenever any road receipt for work done in lieu of taxes shall not have been presented for payment the year the work was done, or at the collection of the first installment of taxes of the year following, or before the regular settlement of the county treasurer with the Township Trustees, when all road funds remaining in the hands of such treasurer are paid over to the said Trustees, then upon presentation of such road tax receipt, or receipts, by the owner of the land for which said road tax was worked out, and for which said receipt was given to the Trustee of the township from which the same was issued and wherein such work was done, such Township Trustee shall upon the presenting of such road receipts to him, by the said holder of the same, take up, redeem, and pay such road receipts out of any funds available in his hands.

(Section 7779.)

**315. Supervisor's duty to give notice to hands.** The supervisor shall notify each person in his jurisdiction liable to work on the highways thereof of the time and place of working, either by verbal or written notice, and if such person shall fail or refuse to respond such supervisor shall issue a second written notice to such person, at least three (3) days prior to the time designated for such work and if upon the receipt of such second notice such person shall fail or refuse to respond he shall thereby forfeit all right to work out such road tax and shall be required to pay all his road tax in cash: Provided, That such supervisor shall, as nearly as practicable, warn out all persons liable to work out their land tax on any certain road of his district, at the same time, to the end that he may act as the superintendent or overseer of such work and may have enough men working to justify an overseer of such work.

(Section 7780.)

**316. When work may be let to lowest bidder.** Such Trustee may let out the work contemplated in section 315, this book to the lowest responsible bidder, and for this purpose he may cause notices

to be posted up in three of the most public places in the township, that proposals will be received under such regulations as he may prescribe, at a time and place to be by him designated, for the improvement or repair of all the highways and bridges, or any part thereof, in such township; and in all such cases such Trustee shall adopt such regulations as to the extent of the improvements or repairs, term of payments, superintendence of the work, and the time of commencement and completion thereof, as he may deem proper. Payments on such contracts, according to the terms thereof, shall be made by the Trustee out of the road or bridge funds in his hands.

(Section 7781.)

**317. Penalty for injury to drains or obstructions to highways.** Any person who shall injure any dam, drain, embankment, ditch or other construction made for the protection of any highway or bridge, or who shall wilfully destroy any guide post, or deface any description or device thereon, or who shall unnecessarily, and to the hindrance of passengers, obstruct any highway or bridge, and who shall, when driving any vehicle, fail to pass to the right when meeting another vehicle, so as to allow it to pass without injury, for every such offense, shall forfeit the sum of five dollars, to be recovered by the Trustee in the name of the township before a justice of the peace of the county; and for every day such obstruction is continued the same sum shall be recovered. In all cases such Trustee, within three days after receiving information of any such offense, shall commence such suit, and the sum recovered thereon shall be used for the benefit of the highways of such township. In case of a recovery in any such action the justice of the peace shall tax, as costs, the sum of five dollars as attorney's fees for plaintiff's attorney.

(Section 7782.)

**318. Duty of Trustee as to prosecution of suits—Supervisors.** All such suits commenced by one Trustee may be prosecuted by his successor in office and no costs shall be taxed against him therein. Any supervisor who shall fail to use due diligence in keeping the highways of his district in good repair, under the regulations herein prescribed, or who shall fail to call out the hands of his district to work on the highways thereof the number of days herein prescribed, unless the tax assessed for such repair of such highway is sufficient, shall for every such offense, forfeit the sum of ten dollars (\$10.00), to be recovered before any justice of the peace of the county, in the name of the township, by the Trustee of such township; and all sums so recovered shall be for the benefit of the district for which such supervisor was elected or appointed, and such Trustee shall bring suit within three (3) days after receiving information of any such failure of duty by such supervisor.

(Section 7783.)

**319. Supervisor to turn his records to successor.** Every supervisor shall hand over all books, papers and moneys, as well as all tools in his possession, to his successor in office when called for. Township Trustee shall procure, with available road fund in his hands, such tools and implements as may be necessary for road districts.



## (Section 7784.)

**320. Trustee to determine improvements to be made.** In determining upon the amount and character of work which shall first be done on any highway, or part thereof, the Township Trustee shall take into consideration the importance of the highway to the traveling public, and its convenience to gravel, stone or other material to be used in its construction. Whenever the citizens interested in the permanent improvement of any highway of public importance, shall, by donation, properly ditch, drain, gravel, embank or otherwise improve any such highway, such Trustee may contribute and perform work thereon equal in value to such donation, if he have the means in his hands to do so: Provided, moreover, That every Township Trustee shall set aside not less than five per cent. of the road funds received by him each year as an emergency fund, to be used in keeping in repair all highways in his township along or on which United States rural free delivery mail routes have been or may hereafter be established and maintained; and it shall be the duty of every such Trustee, and of every road supervisor, to give the preference to such highways in keeping the same in repair. Such highways shall be kept properly drained and free from all obstructions, including snowdrifts, so as to be at all times in good condition for ordinary travel.

## (Section 7785.)

**321. Trustee may administer necessary oaths.** Each Township Trustee is empowered to administer oath in all cases touching the prosecution of the business of the township of which he is Trustee.

## (Section 7786.)

**322. All road moneys, to be used for road purposes.** All road money on hand or that may hereafter be paid to the county treasurer under the provisions of this or of any previous act, shall be paid to the proper Township Trustee and be expended by him as other road funds are required by this act.

## (Section 7787.)

**323. Annual report of supervisor to Trustee.** Each supervisor of each road district shall, on or before the first day of December in each year, make a full and succinct report, under oath, of his proceedings, showing the names of all persons liable to perform, or who have performed, labor on the roads in his district; the amount of commutation money received from any and all sources whatever and how the same has been expended; and shall pay such balance to and file such report with the Trustee of his township on that day.

## (Section 7788.)

**324. Duty of Trustee to audit supervisor's report.** Such Township Trustee shall audit the reports referred to in the last section and enforce the payment of any such balance and compel such report by suit,



(Section 7789.)

**325. Makes inventory of, and responsible for tools.** Every road supervisor shall be responsible for the care and safe-keeping of all the tools belonging to his road district and on going out of office shall report the number and kind of tools in his hands to the Trustee of his township under oath; and such Trustee shall charge each supervisor, on coming into office, with the whole amount of tools in his district, as shown by the statement of his predecessor in office. Such supervisor shall be liable for any loss of, or damage to the tools belonging to his road district, occasioned by his neglect, to be recovered in the name of his township, upon complaint of the Trustee of such township before any justice of the peace therein.

(Section 7790.)

**326. How district boundary lines are to be worked.** All roads running on township, county or road district lines are assigned for construction and repairs as follows: On roads running north and south, the north half is assigned to the township or townships and district or districts on the west side of such line, and the south half is assigned to the township or townships and district or districts on the east side of such lines; and on roads running east and west, the west half is assigned to the township or townships and districts on the south side of such line, and the east half of the township or townships and district or districts on the north side of such line, and the highways so assigned shall be under the control of and be kept in order by the Township Trustee of the township to which they are assigned. All roads running on lines dividing this State from other States shall be worked in conjunction with such other State and shall be assigned for construction and repairs in the same manner as above provided in cases where roads run on township or county lines, as far as applicable.

(Section 7791.)

**327. Penalties for knowingly receiving inferior work.** Any Township Trustee or road supervisor who shall violate any provision of this act, or who shall accept any work knowing that the same is defective according to contract, or who shall give any receipt except for work actually done or material furnished shall be subject to a penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), to be collected in a civil action and he shall be liable on his bond for any loss which the township may suffer from violation of this act.

(Section 7792.)

**328. Definition of township road.** The word township road as used in this act shall be construed to mean any road in any township in this State, the cost of maintenance and repair of which is paid wholly out of the proper township treasury and the oversight and superintendence of which is vested in the proper Township Trustee.

(Acts 1913, p. 877.)

**329. 1913 Road law repeals all conflicting laws.** All acts and parts of acts in conflict with the highway act of 1913 were repealed by that act.

**HIGHWAYS.**

(Acts 1913, p. 411, Secs. 7759d and 7759h.)

**330. Condemnation proceedings for gravel pits—Counties 90,000 to 150,000.** The act 1913, authorizes boards of commissioners of counties with population 90,000 to 150,000 last preceding census, when adjudged necessary to the interests of its free gravel roads or turn-pikes, to require an entry upon any lands, stream, lake or river to procure gravel, sand, stone, timber or other material for such roads.

This is sought through condemnation proceedings in civil action in the circuit or superior court.

The act also provides for sale of road material to townships.

Section five of the act reads as follows:

The board of commissioners of any such county may sell any of said road material to any of the townships of said county for highway purposes upon receipt from the Township Trustees of said townships of a sum not less than the actual cost to the county of the furnishing of said road material. In the event said county should sell any of said road material to a township, the Trustee of said township shall pay to the auditor of such county the price agreed upon and thereupon said money shall be paid to the treasurer of said county by said auditor, and that said auditor shall take a receipt therefor from the treasurer and said receipt shall be filed in the auditor's office of said county and be made a part of the records thereof.

**BRIDGES.**

(Acts 1885, p. 58, Sec. 3795.)

**331. 1885 Act—Election—Non-liability of township for certain claims.** Under the act 1885, where a township has by 60 per cent. of the voters at an election decided to make an appropriation to aid in the construction of a bridge over a boundary stream; it is provided that such township shall not be liable for any debt or claim for work, labor or materials furnished in its construction or its repair; nor for any personal damages to any one by reason of imperfect construction or the same getting out of repair.

(Acts 1913, p. 609, Sec. 3823a.)

**332. 1913 Act—Bridges, erection or repairs, \$100 or less—Township road fund.** Under the act 1913, it is provided that hereafter all bridges erected or repaired on public highways, when the cost of erecting or repairing shall not exceed \$100, shall be built by the Township Trustee and paid for out of the township road fund.

Section 2, repeals all laws or parts of laws conflicting with the act.

**DITCH—ASSESSMENTS.**

(Acts 1907, p. 508, Sec. 6150.)

**333. Ditch assessments paid from township fund.** Assessments made against a township as benefits in the construction of a public ditch shall be paid from the township fund.

**DRAINAGE—TOWNSHIP ACT OF 1915.**

(Acts 1915, p. 320.)

**334a. Supervision Township Trustee.** The cleaning, repair and general superintendence of all ditches or drains that may have been, or may hereafter be, constructed under and by virtue of any law of this State, except dredged ditches, shall be under the exclusive charge and supervision of the Township Trustee of the township in which such ditches or drains or any part or parts thereof are located, and it shall be the duty of such Township Trustee to see that all such ditches or drains, or such part or parts thereof as lie within his jurisdiction are cleaned out and kept open and in proper repair and free from obstructions, in conformity with the original specifications thereof, and in such manner that they may fully and completely discharge the functions for which they were designed and intended, and such Trustee shall likewise have and exercise general supervision over such ditches or drains when the work of cleaning and repairing shall have been completed and accepted, and to make and supervise the levy and expenditure of such assessments as may be needful to keep such ditches or drains in a reasonable state of preservation and repair.

**Note:** This law does not apply to ditches or drains which have been or may be constructed by drainage corporations.

The cleaning and repairing of any public drain (except dredged ditches) should be done by virtue of this law under the supervision of the Trustee, unless the requisite number of landowners interested in any such drain shall file a petition with the county auditor to have the work done under the county drainage act, and the board of commissioners shall grant such petition, whereupon the work of cleaning and repairing such drain shall be done under the supervision of the board of county commissioners, and such drain shall thereafter continue to be under the jurisdiction of the board. Section 35, Acts 1915, p. 417, at p. 453.

**334b. Duty to clean and repair.** It shall be the duty of the Township Trustee of each and every township of this State, in which any such open ditch or drain, or any part or parts thereof, are located, to clean out, and repair, and remove all obstructions therefrom, biennially. Except as otherwise provided in this act, no Township Trustee of any township in this State shall be authorized or required to clean out or repair any open ditch or drain or any part or parts thereof within his jurisdiction until at least one (1) year shall have elapsed since its construction, if newly constructed, or until one (1) full year shall have elapsed since it was last cleaned out or repaired under the provisions of any former law. And in order to equitably distribute the work of cleaning or repairing any such open drains or ditches over such biennial periods as are herein provided for, it is hereby declared to be the intent and purpose of this act that all open ditches and drains situated within any township in this State shall be divided into two (2) groups, on the basis of the necessity or urgency for such cleaning or repair, or the time which has elapsed since such drains or ditches were last cleaned out, repaired, or constructed. All such open drains or ditches which are comprised in the first group shall



be cleaned out and repaired in 1915 and every two (2) years thereafter, and all such open ditches or drains comprised in the second group shall be cleaned out and repaired in 1916 and every two (2) years thereafter, and so on, yearly, group alternating with group. Such groups need not comprise an equal number of such open drains or ditches, and the classification or grouping of such open drains or ditches shall be made by the Township Trustee of the township wherein such open drains or ditches are located, in conformity with the provisions of this section, avoiding in all such groupings or classifications, unreasonable, arbitrary, or invidious discriminations.

**334c. Employment of surveyor.** The Township Trustee of any township in this State, in order to more accurately ascertain the depth and width of such open ditch or drain according to the original specifications and grade line thereof, and to divide such work into stations not exceeding one hundred (100) feet in length, and to compute and determine the number of cubic yards of earth which it will be necessary to remove from each one hundred (100) feet of such ditch or drain, and to determine the labor necessary to repair such open ditch or drain in such manner that it will conform to the original specifications thereof, and to establish the necessary grade stakes, and to perform any and all other engineering work of any kind or character whatsoever which may be necessary to fully carry out the proposed work of cleaning and repairing, is hereby authorized to procure the assistance of the county surveyor, or a competent engineer if the county surveyor be incompetent, or not entirely disinterested. Such surveyor or engineer shall receive for his actual services in assisting such Township Trustee, as hereinbefore provided, the sum of four dollars (\$4.00) per day, and not to exceed two dollars (\$2.00) per day for the services of each deputy surveyor, and the same rate for parts of days, to be paid out of any money in the township treasury not otherwise appropriated, upon a report on oath filed with such Township Trustee; but in cases where it is necessary to employ a civil engineer to act in such capacity as a deputy surveyor, then such deputy shall be paid at the rate of not to exceed four dollars (\$4.00) per day for the time actually employed: Provided, That the total amount to be allowed to such surveyor or engineer for the services of himself and his necessary assistants shall not exceed the sum of ten dollars (\$10.00) for each mile of any such open ditch or drain. All preliminary work preceding the actual work of excavation, including the engineering, clerical work, the advertising, and the letting of the contracts of any ditch or drain contemplated in this act, shall be completed by the first day of August of the year in which such repair work is done. As soon as practicable after the county surveyor or civil engineer shall have completed his surveys, he shall prepare a written report in which shall be embodied all such computations, specifications, information, data and statistics which he may have ascertained from his survey, and which may be necessary to enable such township trustee or any contractor to successfully carry out the work of cleaning and repairing; and he shall, on application of such Trustee, deliver such report to such Trustee.



**334d. Cleaning—Advertising for bids.** After procuring such computations and specifications from such surveyor or civil engineer as provided for in section three (3) of this act, such Township Trustee shall furnish on demand to any person interested, or to any one proposing to bid on such work, the computation of the number of cubic yards of excavation in each station as is above provided for, and such other facts appertaining to such work which such Trustee may have at his disposal; and he shall give notice for two (2) weeks and in at least two (2) issues of a newspaper of general circulation printed and published in each county in which any lands assessed for benefits are situated, and the office, plant or establishment of which newspaper is located nearest to the line of the ditch or drain, and the last insertion of which notice shall be at least ten (10) days prior to the day on which the contract for the cleaning and repairing of such ditch or drain is to be awarded, as hereinafter provided. And he shall likewise give notice for ten (10) days by posting written or printed notices in at least five of the most public and conspicuous places in such township or in the vicinity of the proposed work. Such printed or posted notices shall set forth the time when and the place where such ditch or drain shall be sold for repairs.

**334e. Awarding of contracts.** Such Township Trustee shall on the day and hour and at the place designated in the notice, proceed to let such work by contract to the lowest and best responsible bidder. He may let the work as a whole, or subdivide the same into two or more sections and let the same in separate contracts, as will in his best judgment the most speedily and economically accomplish its completion: Provided, That any person against whose lands assessments for repairs have been made shall have the preference, at the same rate, over any other contractor, to the extent of his individual assessment, respectively, and if such person so assessed for the repair of such ditch or drain shall be present at the time when such contracts for repairs are let, and shall demand a contract for such portion of such work as shall approximately equal his assessment, and shall, in the judgment of the Township Trustee, be entirely competent to undertake such work. And in the event that a portion or allotment of such work is contracted to any person or corporation interested in the repair thereof, such Township Trustee shall, whenever practicable, locate such share, portion or allotment of such ditch upon such tract of land owned by such person, or upon the right of way of such corporate road or railroad in such manner as to meet the convenience of the owner or owners, and he shall fix a permanent mark or monument at the place of beginning of such portion or allotment and he shall likewise establish a permanent mark or monument at the termination of such portion or allotment and give the exact location of such portion or allotment, its length in feet, and a brief description of the manner in which the work shall be done. Any such interested person or corporation to whom a share or portion has been sold, shall, within the time which shall be reasonable, and which for good cause, such as inclement weather or other unavoidable causes, may be extended under the direction of such Township Trustee, construct such part of

such work so set off to him, and if such person or corporation is not ready with a sufficient force to execute and proceed properly and expeditiously with such work when the contractor shall have the work ready for him to begin, in such manner as not to retard or obstruct the progress of the work, or if such person or corporation shall fail or refuse to construct such portion of such work so contracted to him within the time and according to the specifications, or should it become manifest, before the expiration of such time, that such person or corporation would not complete the same, or would be unable to complete the same within the time limited, or in the manner specified, then such person or corporation shall forfeit all right conferred by his contract to such contractor and shall in addition thereto be liable to such contractor for any damage for any avoidable delay which such contractor may suffer by reason of the neglect or failure of such person or corporation to proceed properly with such work, but such person or corporation so in default shall be allowed on his contract a fair price for the work he has performed up to the time his contract is so annulled, such price to be determined by the Township Trustee letting the contract for the work. If such person or corporation to whom an allotment of work is contracted shall perform his work within the time specified, the price thereof shall be applied on his assessment, and the same shall not be collected of him as hereinafter provided. Any person or persons who shall have successfully bid for the whole or any part of such work shall when the same is set off to him, enter into a contract with the Township Trustee to perform such part of such work and give bond with two freehold sureties, for not less than double the amount for which the same is sold to be approved by such Township Trustee, for the performance of his contract, and that he will pay all damages occasioned by his nonfulfillment of his contract, which may be recovered in any court of competent jurisdiction. And the Township Trustee may bring suit in the circuit or superior court of the county upon any undertaking or upon the bond of any contractor for any breach thereof, and the amount recovered shall be paid into the general township fund of such township, and in all suits brought by the Township Trustee under the provisions of this act such Township Trustee shall also recover attorney fees and the judgment shall be without relief from valuation or appraisement laws. And in case any person or persons whose lands are assessed for the repair of such ditch or drain shall be damaged by reason of such default and failure of such contractor to complete the work within the time limited, such contractor so in default shall be liable on his bond to the person or persons so damaged to the full amount of such damages, which may be recovered in any court of competent jurisdiction in a suit or an action on such bond in the name of the State of Indiana on the relation of the person or persons damaged for the use of such person or persons injured or damaged, and the amount recovered shall be paid to the person or persons injured.

**334f. Trustee has charge of work.** The Township Trustee shall oversee all such work and have the same done in strict accordance with the specifications as hereinbefore described and in a workmanlike man-

ner and with reasonable expedition, and if such Township Trustee shall refuse, fail or neglect to have such repairs made and done according to the provisions of this act and conformable to the specifications as hereinbefore provided, he shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00), for each and every offense. And when said work is completed said Trustee may have the same accepted by a competent surveyor, and the service of the surveyor shall be paid by the township.

**334g. Repairing obstructed drainage.** And such Township Trustee shall likewise be authorized and required to clean out and repair any open or untiled ditch or drain within his jurisdiction when such ditch or drain shall have become choked or obstructed by accumulations of sand, earth, brush, debris or other material and when the flow of the water in such ditch or drain is checked, obstructed or dammed up thereby. And if the probable cost of such repair will not exceed ten dollars (\$10.00) such Trustee shall proceed promptly to have such work done in the most efficient and economical manner. And he shall pay the cost of such labor and repair out of the emergency fund of the proper ditch or drain hereinafter provided for, unless there be no such fund or unless such fund shall be exhausted. And in the event there be no such fund or when such fund shall be, or shall become exhausted, then such Township Trustee shall pay the cost of such labor and repairs in the first instance out of the township treasury and when the first assessment for biennial repairs next succeeding shall be made, such sums, so advanced, together with any interest, at the rate of six per cent. (6%) per annum, which has accumulated thereon, shall be added to and become a part of the sum or sums raised for repair work and shall be assessed and distributed proportionately, as herein provided, on all persons or corporations assessed for repairs. But if the probable cost of such cleaning or repairs shall exceed ten dollars (\$10.00), then and in that event such trustee shall proceed in all cases as is in this act provided for the biennial repair of open or untiled ditches and drains.

**334h. Shrubbery removed.** The Township Trustee shall have all brush, weeds, willows, trees, or other natural growth removed from the banks of all open and tiled ditches and drains excepting in cities and towns, or from the banks of such part or parts thereof as lies within his jurisdiction for a distance of twenty (20) feet on either side thereof, during the month of July, each year except where such natural growth other than weeds protects the washing of such ditches and does not interfere with the flow of water in such ditch. If the total cost of cutting and removing such brush, weeds, willows or other natural growth shall not exceed ten dollars (\$10.00) such Township Trustee shall proceed to have such work done in the most efficient and economical manner and he shall pay the cost of such labor out of the proper emergency fund if there be such fund, and unless such fund be exhausted, and in the event that there be no such fund, or that the fund shall be or shall become exhausted, then such Township Trustee shall pay the cost of such labor or repairs, in the first instance



out of the township treasury and when the first assessment for biennial repairs for any open drain, or for the creation of an emergency fund in the case of tile drains next succeeding shall be made, such sum, so advanced, together with any interest at the rate of six per cent. (6%) per annum thereon, shall be added to and become a part of the sum or sums raised for repair work and shall be assessed and distributed proportionately, as in this act provided, on all persons or corporations assessed for repairs. But if the probable cost of removing such growths shall exceed ten dollars (\$10.00) then and in that event such Trustees shall at any time prior to July 1, each year, let the contract for the removal of such weeds, brush, willow trees or other natural growth to the lowest and best responsible bidder, after having published notice in some paper enjoying a general circulation among the persons interested therein: Provided, That the last of such notices shall be inserted at least ten (10) days prior to such letting. And he shall pay the costs of such labor or repair in the first instance out of the township treasury and when the first assessment for biennial repairs of any open drain or for the creation of an emergency fund in the case of tile drains, next succeeding shall be made, such sum, so advanced and expended, with interest at the rate of six per cent. (6%) per annum which has accumulated thereon, shall be added to and become a part of the amount or amounts raised for such repair work and shall be assessed and distributed proportionately as herein provided. If any such Township Trustee in this State shall refuse, fail or neglect to have such repairs made and done according to the provisions of this section he shall be deemed guilty of a misdemeanor and shall, upon conviction, thereof, be fined in any sum not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) for each and every offense.

**334i. Tile drains—Cleaned and repaired.** All the drains which may be within the jurisdiction of and under the supervision of the several Township Trustees of this State shall be repaired under the direction of such Trustees whenever the necessity for such repairs may arise or exist and shall not be classified for biennial repairs as herein provided for open drains. Any Township Trustee of any township in this State shall be and is hereby authorized to repair any tile drain within his jurisdiction, at any time, upon notice of the necessity of such repairs, by any person or corporation interested. Upon the receipt of such notice, such Township Trustee shall proceed immediately to have such tile drain repaired without advertising, letting a contract or contracts for the performance of the work, or imposing or apportioning assessments as hereinafter provided, if the total cost of such repair does not exceed ten (\$10.00) dollars, and such Trustee shall pay such cost of repair out of the emergency fund of the proper tile drain, as hereinafter provided, if there be such fund, and unless such fund be exhausted. And in the event that there be no such fund, or that the fund shall be or shall become exhausted, then such Township Trustee shall pay the cost of such labor and repairs out of any funds in the township treasury not otherwise appropriated. But if and in the event that the cost of such repairs shall exceed ten dollars (\$10.00)



then such Township Trustee shall proceed by advertising and letting a contract or contracts for the performance of the work in all respects as is provided in this act for the letting of contracts for the repair and cleaning of open ditches or drains. As soon as any such contract or contracts shall have been awarded, and if there be no emergency fund, such Township Trustee shall provide for the creation of an emergency fund by levying an assessment upon the lands which will be benefited by such repairs in the proportion and on the basis of the original assessment for the construction of such tile ditch or drain and in accordance with the benefits received thereby.

**334j. Certifying cost—Emergency fund.** The Township Trustee shall certify the cost of the maintenance and repair of any ditch or drain, or any part or parts thereof, which lie within his jurisdiction and which is cleaned out and repaired under his supervision, and he shall certify the cost of his necessary assistants, and any and all other expenses authorized by any of the provisions of this act, as soon as such costs are known and ascertained. And he shall likewise provide for a fund to be known and designated as an emergency fund, for such purposes as are in this act provided. Such emergency fund shall be equal to approximately one per cent. (1%) of the original costs of the construction of such ditch or drain. And in order to raise the necessary money to defray the expense herein authorized and to create and replenish the emergency fund provided for in this section, such Trustee shall apportion and assess the costs necessary to repair any tile drain and the sum or sums required to create or replenish the emergency fund, hereinbefore defined, upon the lands which will be benefited by such repairs or removal of obstructions in proportion and on the basis of the original assessment for the construction of such tile drain and according to the benefits received thereby. If any tile drain contemplated in this act shall have been newly constructed, or reconstructed the cost of such reconstruction shall be taken as the basis in determining the proportionate assessments for benefits or damages in repairing or cleaning. If at any such biennial levy for necessary costs of labor and repairs or replenishment of the emergency fund, such Trustee shall find that the emergency fund levied at the last preceding biennial assessment is not exhausted, and if in his judgment no additional levy for an emergency fund is required, then and in that event he shall not be required to make such additional levy for the increase of such emergency fund.

**334k. Tax levy.** The amount or amounts of money which may be necessary to clean or repair any open ditch or drain and to create an emergency fund to keep such ditch or drain in a state of repair, as hereinbefore provided, shall be raised by levying a flat or uniform rate upon all agricultural lands, town or city lots, streets, alleys, highways, public grounds, and railroad rights of way which may be benefited. For purposes of taxation each town or city lot shall be deemed to be equivalent to one (1) acre of agricultural land and shall be assessed at a uniform rate per acre or per lot, as the case may be. The acreage comprised in all highways, streets, alleys, public grounds or railroad rights of way shall be estimated and assessed proportionate-

ly. The Township Trustee shall award to each tract or parcel of land through which any open ditch or drain passes reasonable damages, which in his judgment, accrue to such lands by reason of the presence or existence therein or thereon of such open ditch or drain, and the benefits assessed to such tract or parcels of land shall be abated accordingly. The Township Trustee shall take note of any accumulations of earth or debris or any other obstructions in the channel of such ditch or drain which are directly traceable to the negligence of any landowner. The Trustee shall notify such landowner of the presence of such accumulations or obstructions and give him an opportunity to remove them at his own cost, and upon failure or refusal to do so, the Trustee shall estimate the approximate cost of removing such obstructions and accumulations and assess the same as special benefits to such landowner and the special assessment so made shall be collected at the same time and in the same manner that assessments for cleaning and repairs are collected.

**3341. Record of assessments—Objections.** Such Township Trustee shall reduce such assessments to writing, and after the same are finally fixed and established he shall record the same in a book to be kept for that purpose, and known as the township drainage record. He shall thereupon cause to be posted up, for not less than ten (10) days, in five (5) public places in the township where lands are assessed for the repair of such work, written or printed notices of the place where and the time when he will hear all objections that may be made to such assessments, which notice may be in substance as follows:

To whom it may concern:

You are hereby notified that I will be at my office on the..... day of .....19...., at the hour of ..... and will then and there hear all objections that may be made to my assessment for cleaning out biennially and keeping in repair (or creating an emergency fund in case of a tile drain) the ..... ditch, in ..... township, ..... county, Indiana, when and where you can appear and be heard if you see fit.

.....

Township Trustee.

Dated this.....day of ..... 19...

A copy of said notice shall also be sent by mail to each individual whose lands are assessed for the repair of such work, and to an officer of each corporation, and to a station agent of each railroad which has been assessed for the repair of such work. Where the residence of any non-resident owner of such land is known to the Township Trustee, he shall send a copy of such notice by mail to such non-resident. If a non-resident owner of land has a known agent in the county a copy of said notice shall be mailed to such agent.

**334m. Power to change assessments.** Upon the day named in such notice, such Township Trustee shall be present at the time and place therein mentioned, and shall hear all objections made to such assessments, and shall have power to administer oaths to all persons

examined before or by him. He may adjourn the hearing from day to day, or from time to time, as may be deemed necessary until all objections are heard. All persons interested shall take notice of such adjournment without further notice. After hearing all objections that may be offered to such assessments, such Township Trustee shall confirm or change the same as justice may require, and shall enter an order accordingly, which shall be final and conclusive upon all parties interested, unless appealed from in ten (10) days thereafter.

**334n. Omitted assessments—Appeal.** If any person or corporation benefited by any ditch or drain now constructed or which may hereafter be constructed under any of the drainage laws of this State, shall have been inadvertently or for any other reason omitted in the original assessment for the construction of such ditch or drain, the Township Trustee shall, by and with the aid of the surveyor or civil engineer as hereinbefore provided for, and at the time when ascertaining the grade line and making the specifications for such ditch or drain, levy on such person or corporation so benefited a reasonable assessment for the repair of such ditch or drain. Any person or corporation aggrieved by any assessment imposed under the provisions of this act may appeal therefrom to the circuit court or the commissioners' court of the county by filing with the clerk of said court or the county auditor, within ten (10) days from the time of such order, an undertaking conditional that he will duly prosecute such appeal, and pay all costs that may be adjudged against him on such appeal, such surety to be approved by said clerk or county auditor; whereupon such clerk or county auditor shall issue a notice in the nature of a summons to such Township Trustee, which shall be served by the sheriff of said county, and thereupon such Township Trustee shall file with such clerk or county auditor a copy of the record of such assessment and the objection of the appellant thereto, which shall be all the proceedings necessary upon such appeal. If the circuit or commissioners' court reduce the assessment one-fifth in amount then all costs occasioned by such appeals shall be taxed against such Township Trustee, and paid out of the general funds in the township treasury not otherwise appropriated, otherwise the costs shall be adjudged against the appellant. If more than one person appeal separately the cases shall be consolidated and tried together. The circuit or commissioners' court may confirm the assessment made by the Township Trustee or change the same, and its decision upon such appeal shall be final and conclusive. In case of the subdivision of tracts of land the assessment for repairs of such drains and ditches as may be located thereon shall be proportionately divided by such Trustee or by contract between the persons interested and the duties prescribed under this act, pass to grantee.

**334o. Railroad assessments.** That in all cases where the record of the original assessment for the construction of such ditch or drain shall have been lost, destroyed, mutilated, or is for any other reason inaccessible, such Township Trustee and such surveyor or civil engineer shall be authorized and required to ascertain and determine by actual view and inspection the lands and highways and right of way of any



railroad or railroads which will be benefited by such work of repair and shall fix and apportion the assessments on such lands, highways, right of way and easements as shall in their judgment seem just and equitable, conformable to any laws which are now or may hereafter be in force in this State in relation to the construction of drains and ditches.

**334p. Trustee collects assessments.** The tax assessed for the repair and maintenance of such ditches and drains shall be paid to the Township Trustee as follows: Twenty-five (25) per cent. thereof shall be paid to such Township Trustee within thirty (30) days after the commencement of any repair. The remaining seventy-five (75) per cent. of such assessment shall be paid in three equal installments at intervals of thirty (30) days each, or as the work progresses. And if any person or corporation assessed for the repair of any such ditch or drain shall permit his four (4) installments to become delinquent, such delinquent shall be liable to a penalty of not to exceed eight per cent. upon the amount of any installment not paid when due, which the persons or property assessed shall pay, together with the cost of collection, and such Township Trustee may bring suit in any court of competent jurisdiction of the county wherein such ditch or drain is located to collect such delinquent tax and expense and enforce and foreclose the lien on such land or railroad. If any costs shall have been paid in the first instance out of the township treasury, the Township Trustee shall take all such advancements for the repair of any such drain into consideration, including such sums advanced, together with interest at the rate of six per cent. per annum thereon, in such assessments and when collected he shall reimburse such township for funds advanced for the repair of such drain. And all moneys derived from assessments for any repairs contemplated by this act are hereby declared subject to deposit and such Township Trustees shall deposit all such funds in the depository or depositories of such townships selected by the proper board of finance and he shall likewise file with the secretary of such board of finance a verified statement of the funds so deposited. And such funds shall not be subject to withdrawal except to discharge the obligations incurred by the provisions of this act for the repair of such ditches and drains and only as the work progresses. And if any interest accrues on such fund it shall be added to and become a part of such fund. And such Trustee shall keep a true and correct account of all funds collected, advanced, expended or disbursed in a book provided for that purpose, the account with each drain being kept separately. Subject otherwise to the provisions of this section, the assessment to create or replenish the emergency fund of any tile drain may be paid within thirty (30) days after the beginning of any repairs.

**334q. Credit for blind ditch.** Where any person or persons shall have converted that portion of any ditch or drain running through his or their lands or parts thereof into a blind ditch by putting in drain tile of sufficient dimensions to serve the purpose of drainage, such drain tile so put in being continuous from the head or beginning of such ditch or drain through the land of the owner or owners, and



thus obviating the necessity of working that part of such ditch so tiled on his or their lands, such tiling shall be taken into consideration in making assessments for repairs, and the assessments hereinafter provided shall be made among the landowners, roads or railroads only through whose lands such ditch or drain is open; and where assessments have been made to include land or lands through which such blind ditch or tiling forms a part of the open ditch, the owner or owners shall receive due credit for the portion so tiled. But such person or persons who shall have converted that portion of any such ditch or drain running through or across his or their lands or part thereof into a blind ditch by putting in suitable drain tile of sufficient dimensions to serve the purpose of drainage, shall be responsible for the replacement of all tile which are found to be defective, or which have been crushed or broken, and for the removal of all obstacles or obstructions which may have accumulated in such tile, and such only, which extend through or across the land or lands of such persons, and which are directly due to such crushed, broken or defective tile. But when the accumulations or obstructions shall be directly traceable to the negligence of other persons interested in such ditch or drain, or due to the natural and unavoidable accumulations of earth, leaves, debris, or other material, the expense of removing such obstructions or accumulations shall be charged to and paid out of the funds raised by proportional assessment as herein provided.

**334r. Adjoining townships—Joint powers.** Whenever it may be necessary in cleaning or repairing any ditch or drain contemplated in this act lying on, along, across or near to the line between any two or more contiguous or adjacent townships, and when such drains or ditches can not be cleaned, repaired or improved in the best manner without affecting the lands in such contiguous or adjacent townships, the Township Trustees of the several townships in this State, so adjoining other townships therein, shall have authority to join with the proper Trustees of such contiguous or adjacent townships in the repair or improvement of any such ditch or drain. Such Trustees of any such contiguous or adjacent townships are hereby authorized to proceed jointly in the repair or improvement of such ditch or drain, each to pay such proportion of the repair or improvement of any such ditch or drain as shall be just and equitable, and all the provisions of this act so far as applicable shall govern such Township Trustee in relation to such joint work of improvement or repair. And any Township Trustee shall be authorized to proceed similarly if the ditch or drain which it is desired to clean out or repair lies on, along, across or near to the state line between the State of Indiana and any adjoining State: Provided, always, That such townships, counties or other political subdivisions in other States shall pay their proper share of the necessary cost and expenses: Provided, That in all cases where the ditch or drain lies on, along, across or near to the line between any two or more contiguous or adjacent townships in this State, any one or more Trustees of such townships may delegate the authority conferred on them by this act to any one of their number, preferably to the Trus-

tee of that township in which the greater portion of such ditch or drain is located, and he shall proceed in all cases as is provided in this act.

Any Trustee who shall oversee and supervise the work of cleaning or repairing any such inter-township drain shall be entitled to receive from the township treasury of the adjoining township the sum of three dollars (\$3.00) per day for each day or fraction thereof which he is necessarily employed in overseeing the work on such part of such inter-township drain which is situated within such adjoining township or townships.

#### SECTIONS OMITTED.

**Note:** Laws constituting Sections 335 to 339, inclusive, of this book, were repealed by the legislature of 1915, and for that reason are omitted.

#### OBSTRUCTIONS, REMOVAL.

(Acts 1907, p. 508, Sec. 6173.)

**340. Owners of lands liable for obstructions by cattle.** That the owner of inclosed land through which any allotted ditch may run, shall be liable to the Trustee for any obstruction caused by cattle or stock, and upon notice from the Trustee, the owner of said land shall immediately remove such obstruction, and if not so removed, the Trustee shall have said ditch repaired, and may sue such owner in any court having jurisdiction, and collect all expenses incurred in making any such repair, provided such expenses shall include the reasonable attorney's fees.

#### DITCHES—PUBLIC TILE—PETITION FOR REPAIRS.

(Acts 1913, p. 152, Sec. 6174.)

**341. When Trustees may use road funds to repair tile ditches.** Under the amended act 1913, provision is made for the repair of any tile ditch which has been constructed under any law of the State.

The act provides that any owner who may have been assessed for such construction may petition the circuit or superior court, or the board of commissioners, alleging that such tile drain can be more economically repaired, or that the drainage is incomplete and can be made sufficient by conversion of the ditch into an open one, or in other ways.

The act also provides that when such public tile drainage has become defective, by reason of broken tile, uncovered, displaced or stopped up, and the cost of such repair will not cost to exceed \$50, then the Township Trustee of the township in which such defective condition exists, may repair the same out of the road funds available in his hands.

#### 341a. JOINT DITCHES—BY AGREEMENT.

(Acts 1915, p. 563.)

This act provides that in case of the failure of a person interested in a joint ditch, which has become obstructed, to repair his portion, any landowner damaged by such obstruction may report the facts to

the Trustee. The Trustee shall then notify the offending owner to repair his drain, and on his failure so to do, the Trustee, within ten days of such notice, shall proceed to make the necessary repairs, and certify the cost thereof to the county auditor, who shall add 50 per cent. penalty, and collect the same as any other taxes are collected. If any surplus exists after payment of the cost of the repair, it shall be added to the road fund for repair of free gravel roads.

#### FENCES—TRIMMING HEDGE FENCE—PARTITION.

(Acts 1895, p. 61, Sec. 7405.)

**342. Hedge fence—Annual trimming—Partition.** The act of 1895, requires that all hedges or other live fences along the lines dividing lands owned by different persons in the State of Indiana, shall be cut and trimmed down to the height of not exceeding five feet and to a width of not exceeding three feet once in every calendar year.

(Acts 1895, p. 61, Sec. 7406.)

**343. Duty of Trustee as to trimming partition line hedge fence.** It shall be the duty of any Township Trustee, upon complaint in writing, signed by the complainant, who must be an owner or owners of land adjoining said fence, that any person owning any hedge or other live fence upon a line dividing lands owned by different persons, has neglected to cut and trim said hedge or other live fence as heretofore provided, to examine within five days after receiving such notice all hedges or other live fences so complained of, and if there shall be any hedge or other live fence that has been complained of, that has not been cut and trimmed as heretofore provided, he shall give the owner or owners thereof written notice to cut and trim such hedge or other live fence and to remove the brush to his own land within thirty days after receiving such notice, such notice to be served by reading the same to said owner or owners, or by leaving a copy of the same at his usual place of residence: Provided, That if the owner or owners of lands divided by such hedge or other live fence be not residents of the townships, where such hedge or other live fence is located, such notice shall be served by mailing a copy of the same to said owner or owners directed to his or their last known postoffice, and if such owner or owners, their agents, or tenants, do not proceed to cut and trim such fences and remove the brush as heretofore provided, that such Trustee shall, immediately after the expiration of thirty days, cause said hedge or other live fence to be cut and trimmed, as heretofore provided, and the brush removed to the owner's land; such Trustee shall recover all expenses incurred in cutting and trimming such hedge or other live fence and removing the brush as before provided, by suit against the owner or owners of the lands on which such hedge or live fence is situated, before any justice of the peace of the township, in which such hedge or other live fence is situated, or they may bring suit in the circuit or superior court of the county in which such hedge or other live fence is situated, to collect such expenses and any judgment so recovered shall be without relief from valuation or appraisement laws.



(Acts 1895, p. 61, Sec. 7407.)

**344. When prosecuting attorney brings suit.** It is hereby made the duty of the prosecuting attorney to prosecute such suit in the name of the State of Indiana on relation of such Township Trustee, for which service the prosecuting attorney shall receive the sum of ten dollars to be collected as part of the cost of such suit.

(Acts 1895, p. 61, Sec. 7408.)

**345. When Trustee neglects—Penalty.** Any Township Trustee, who shall fail or neglect to perform his duties as laid down in this act, upon complaint of any freeholder of said township, shall be fined not more than twenty-five dollars nor less than five dollars.

#### HEDGE FENCE.

(Acts 1 R. S. 1852, p. 307, Sec. 7806.)

**346. Petition to Trustee to plant hedge fence on highway.** The Trustee of any township, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway, provided it will not be an obstruction to such highway.

#### FENCES—PARTITION FENCE DEFINED.

(Acts 1911, p. 515, Sec. 7377.)

**347. Definition of a "partition fence."** All fences now constructed and used by adjoining landowners as a partition fence or fences unless specially agreed upon by such landowners shall be deemed partition fences and shall be repaired, maintained and paid for as is herein provided.

(Section 7378.)

**348. Who shall build—When Trustee shall act.** It shall be the duty of all landowners whose lands join and separate said land by a partition fence to be constructed upon the line or lines dividing or separating said lands whether said lands were divided heretofore or may hereafter be divided. In case no division of said partition fence has been made between the landowners for the building or repairing or rebuilding of such partition fence, then in such case the landowner, whose land lies to the east of said fence, shall build the north half thereof and the landowner whose land lies to the west of said fence, shall build the south half thereof and if the landowner's land lies north of the fence to be built, rebuilt or repaired he shall build, rebuild or repair the west half thereof, and if the land lies to the south of such fence, such landowner shall build the east half thereof. And if any landowner fails to build, rebuild or repair such fence after receiving notice as is hereinafter provided, the Township Trustees wherein said land or line is located, shall build, rebuild or repair such fence as is hereinafter provided.



(Acts 1915, p. 638, amending Sec. 7379.)

**349. How cost apportioned—Trustee's procedure.** All partition fences shall be built, rebuilt, kept in repair at the cost of the several landowners whose lands are enclosed or separated by such fences equally according to the number of rods or proportion thereof such landowner may have along such line of fence whether his, her or their title in fee simple, or a life estate. That if any landowner as above defined, shall fail or refuse to compensate for building, rebuilding or repairing his, her or their proportion of fence, any landowner interested in such fence after having built, rebuilt or repaired his proportion of such fence, shall give to the defaulting landowner, his agent, or tenant twenty days' notice to build, rebuild or repair his proportion of such fence as the case may be, and if such defaulting party shall fail to build, rebuild or repair such fence within said time, such landowner shall then notify the Township Trustee of the township wherein said lands are located of such fact: Provided, That where the fence sought to be established, rebuilt or repaired, is on a township line, in such case the owner or owners shall notify the Trustee of the adjoining township to the one in which the defaulting party lives of the improvement he or they may desire made, and such Trustee shall have jurisdiction of such matter, unless disqualified as hereinafter provided, estimate the costs for such fence, building, rebuilding or repairing the same, as the case may be, and within a reasonable time after being notified such Trustee shall make out a statement and notify such defaulting party of the probable cost of building, rebuilding or repairing such fence, as the case may be, and if after twenty days, said fence is not built, rebuilt or repaired by such defaulting landowners, such Trustee of such township shall build, rebuild or repair such fence as the case may be: Provided, That such Trustee shall use only the materials for such fences as is most commonly used by the farmers of such community: Provided, further, That if such Trustee of such township is disqualified to act, then it shall be lawful and it shall be the duty of the Trustee of the adjoining township, residing nearest to where such fence is situated to act in the premises upon receiving a notice so to do by any landowner interested therein: Also, Provided further, That a lawful partition fence shall be a straight board and wire fence or a straight wire or a straight board fence or a picket fence four feet high, a straight rail fence four and one-half feet high, a worm rail fence five feet high and all fences of every structure to be sufficiently tight and strong to hold hogs, sheep, cattle, mules and horses: Provided further, That if a ditch or creek crosses the division land [line] between two landowners, necessitating additional expense in the maintenance of the part over such stream, if such landowners can not agree upon the proportionate share of each, the Township Trustee shall appoint three disinterested citizens who shall apportion the partition fence to be built by each landowner: Provided, further, That any Trustee related to any of the parties interested or if an interested party himself, then it shall be lawful for the Trustee of any other township residing nearest to where such fence is situated to act

in the premises. Provided, further, That in all cases where a ditch, creek, forms, covers, or marks the dividing line or any part thereof of the lands of separate and different landowners of this State so that partition fences such as are required and provided for in this act can not be built and maintained on such dividing line, then and in all such cases such partition fences shall be built and maintained under the provisions of this act as near to such boundary line as may be, and each landowner shall be required on his own land to build a separate partition fence, and to maintain the same at his own cost. Provided further, That in all cases where partition fences such as are required and provided for in this act, cross any ditch or creek and by reason thereof it is impracticable to construct or maintain that portion of said fence as would cross said ditch or creek, as a stationary fence, then and in all such cases there shall be erected in lieu of such portion of said fence across said ditch or creek, and as a part of such partition fence, flood-gates or other similar structures, sufficiently high, tight, and strong to turn hogs, sheep, cattle, mules and horses or other domestic animals, and so constructed as to swing up in times of high water. And such flood-gates or other similar structures shall be so built and constructed as to connect continuously such partition fences: and, Provided further, That if the building and maintenance of such flood-gate or other similar structure occasions additional expenses, and such landowners can not agree upon the character of flood-gate or other similar structure, or upon the proportionate share of the cost thereof to be borne by each, the Township Trustee upon notice in writing from either landowner of such disagreement and the nature thereof, shall appoint three disinterested citizens, of said township, who shall determine the kind of structure and apportion the cost of such flood-gate or other structure between such landowners, taking into consideration the parts and portion of such fence being maintained by each landowner. And the determination of a majority of such arbitrators of any matter or matters submitted to them shall be final and binding on each landowner. The compensation of such arbitrators shall be two dollars each, which shall be paid by said landowners in the proportion they are ordered to bear the expense of such gate or structure. In case either or both of such landowners shall fail to construct or compensate for constructing the structure determined upon by such arbitrators in the proportion determined, within thirty days from such determination, such Township Trustee shall proceed at once to construct such gate or structure and collect the cost thereof, including the compensation of such arbitrators, from such defaulting landowner or landowners in the same manner as is provided for ordinary partition fences. And such flood-gate or other structure shall be repaired, rebuilt or replaced in accordance with the determination of said arbitrators.

(Section 7380.)

**350. Trustee's duty upon completion—Per diem \$3.00.** As soon as such Trustee has had such fence built, rebuilt or repaired, he shall

make out a statement in duplicate of the actual cost incurred by him in the building, rebuilding or repairing of such fence, adding to such statement three dollars per day for every day actually employed by him in performing the service required herein, one to be handed to the landowner affected by the work and the other to be filed in the auditor's office of the county wherein said fence is located and where the landowner resides affected by said work and by said auditor placed on the tax duplicate against the lands of the landowner affected by said work, and to be collected as taxes are collected and when so collected to be paid to the Township Trustee filing said statement. The fees taxed by the Township Trustee shall be his sole property when collected.

(Section 7381.)

**351. Trustee freed from any personal liability.** There shall be no personal liability upon the Township Trustee for any contract he may make by reason of this act for the building, rebuilding or repairing of fences as herein provided, but the contractor shall receive his pay from the township funds, the same to be reimbursed when said contract price is paid into the county treasury.

(Section 7382.)

**352. Lands assessed at \$5 or less per acre—Exemption.** This act shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all lands whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot: Provided, That this section shall not apply to any land whose assessed value is five dollars or less per acre or exempt from taxation.

#### **CEMETERIES—ABANDONED.**

(Acts 1913, p. 290, Sec. 4438.)

**353. 1913 law—Trustee's duty concerning abandoned cemeteries.** That any cemetery located in any township, or within any city or town within such township, which cemetery is abandoned, or has been or shall be hereafter deeded to such townships, and not under the control or management of any organization or association or individual whose duty it is to care for and maintain such cemetery, shall be under the care and supervision of the Township Trustee of such township.

(Section 4438a.)

**354. Care and maintenance of cemeteries.** It shall be the duty of the Township Trustee to care for and maintain in a respectable condition, by fencing, when there is no fence, by keeping the weeds, briars and brush mowed and cleaned up in all public cemeteries located within his township, or within any city or town located within such township, which are wholly or in part abandoned or unused and are not under the supervision of any association, organization or individual whose duty it is to so care for the premises.



**354a. DONATIONS FOR CEMETERY TRUST FUND.**

(Acts 1915, p. 581.)

The act of 1915 relating to donations of not less than \$100 to boards of county commissioners, or Trustees, for cemetery uses, which shall be cared for and loaned the same as common school funds, provides under Sec. 4, as follows:

The county auditor shall make distribution of the interest accrued on any cemetery fund or funds on the last Monday of January of each year and to the following person or persons: To the Township Trustees of the township in which any abandoned or unincorporated cemetery is located, provided that such cemetery be located on a county line or on a civil township line, then the Trustee whose township lies on the east or south of such cemetery shall have charge of the cemetery and shall receive the money from the county auditor having the fund or funds in trust: To the treasurer of any board of directors of any incorporated cemetery.

The Township Trustee and the treasurer of said board of directors shall each take a receipt or voucher for any money paid out stating the amount paid out, the purpose for which expended and the fund from which it came. The receipts and vouchers shall be filed with county auditor on or before January 1st of each year and shall be presented to the board of county commissioners for examination and approval at their January meeting.

**ELECTIONS.**

(Acts 1897, p. 199, Sec. 6884.)

**355. Trustee inspector of elections in precinct where resides—When not eligible—Qualification of judges.** Township Trustees shall, by virtue of their office, be inspectors of elections in the precincts in which they respectively reside, and shall, prior to the opening of the polls in such precincts, appoint as judges of elections two qualified electors of such precinct, who shall have been freeholders and resident householders therein for at least one year, or householders for at least two years next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes in the State at the preceding general election: Provided, If no persons that are qualified will consent to serve as such judges, or that if there are no persons residing in any precinct qualified to act as judges of election, by reason of the fact that they have not been resident householders within such precinct for one year, then in that case the Township Trustee shall appoint two qualified electors of such precinct as such judges: and, Provided further, That if at least one week or more prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the State at the last general election shall designate a member of such party as judge, having the same qualifications as above prescribed, he shall be appointed, and such judges, together with the inspector, shall constitute a board of election. No person shall be eli-



gible as a member of the board of election who has anything of value bet or wagered on the result of such election, or is a candidate to be voted for at such election, or who is father, father-in-law, son, son-in-law, grandfather, grandson, brother, brother-in-law, uncle, nephew, first or second cousin of any candidate at such election. If at any time before, or during an election, it shall be made to appear to any inspector, by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified under the provisions of this act, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed; and, in case such disqualified judge shall have taken the oath of office hereinafter prescribed, the inspector shall place such oath and affidavit before the next grand jury of the county.

### ELECTIONS—MEALS FOR ELECTION OFFICERS.

(Acts 1881, S. p. 482, Sec. 6952.)

**356. Trustee to furnish meals—How paid.** It shall be the duty of the Township Trustees, in their respective townships, to cause the members of the election board in each township or precinct to be furnished with good, plain, and substantial meals, at the regular hours for meals, during the election day and until the count is finished, but no spirituous, vinous, or fermented liquors shall be furnished. Such Trustees shall be allowed, and paid, by the county board the actual cost of such meals, in their next regular account.

**Note:** Boards of county commissioners cannot allow a claim to a Trustee for meals which the Trustee himself has furnished.

### TALLY PAPERS.

(Acts 1905, p. 193, Sec. 6966.)

**357. Must keep tally papers of township separate from others.** The tally papers for township elections shall be kept separate and apart from those upon which are recorded the votes cast for candidate for state, district and county offices, and the vote for township offices shall be canvassed as heretofore provided by law: Provided, however, That in all townships having more than ten (10) voting precincts the vote thereof for township offices shall be canvassed by the county board of canvassers as herein provided for all county elections.

### TOWNSHIP ELECTIONS.

(Acts 1893, p. 192, Sec. 6982.)

**358. Change in time of holding township election—November.** The time of holding the election of Township Trustees, justices of the peace, assessors, constables, road supervisors and such other officers of townships as may be provided for by law, shall be changed from the April election, and all such township officers shall be elected at the general election to be held on the first Tuesday after the first Monday in November, 1894, and every four years thereafter, and which election

shall be conducted by the provisions of the law governing said general election.

**Note:** This law is superseded by Section 359, this book, as to the Township Trustee and assessor. This law is superseded by Section 297, this book, as to the election of road supervisors. Acts 1915, p. 101.

### ELECTION OF TOWNSHIP TRUSTEE.

(Acts 1911, p. 113, Sec. 6983.)

**359. Extension of terms under act of 1911.** The time for holding the election of Township Trustees and assessors shall be changed from the general election on the first Tuesday after the first Monday in November, 1912, to the general election on the first Tuesday after the first Monday in November, 1914; and at the general election on the first Tuesday after the first Monday in November of every fourth year thereafter.

### JUSTICES OF PEACE AND CONSTABLES.

(Acts 1897, p. 64, Sec. 6984.)

**360. Time for holding election for justices of the peace and constables.** The time of holding the election of justices of the peace, constables and such other officers of the township, as may be provided for by law, and the time when they shall enter upon the duties of their respective offices, shall remain as now fixed by law. See Section 358, this book.

(Section 6985.)

**361. Township elections governed by general election law.** The election of township officers shall be conducted under the provisions of the law governing said general election.

(Section 6986.)

**362. Township ballots to be printed on yellow paper—Yellow ballot-boxes.** The names of the different candidates for said township offices shall be printed on separate ballots of a yellow color and deposited in separate ballot boxes from that of the state and county ballots; said ballot boxes shall be painted yellow and said ballot and ballot boxes shall be prepared in conformity with the law governing said general elections.

(Acts 1881, S. p. 482, Sec. 6987.)

**363. Canvass of the vote—Inspector's duties.** The board of judges shall count the votes given for each person for each office, and certify the result, and the inspector shall file one of the poll books and tally sheets, with ballots on a string, in the clerk's office of the county, within ten days after such election. If two or more have the highest and an equal number of votes for the same office, such judges shall, when the result is certified, determine by lot the person entitled to the office, and the next day, the inspectors shall make out and deliver to the person elected, when demanded, a certificate for each person elected to

any office in said township, except justice of the peace: Provided, That, if there be more than one precinct in said township, then the inspectors of the several precincts shall meet, on the day following the election, at the office of the Township Trustee, at as near ten o'clock a. m. as is practicable, and compare the poll books and certificates thereto held by them, and having aggregated the vote of the township, declare and certify the result; and if two or more persons have the highest and an equal number of votes for the same office, they shall determine, by lot, which shall be declared elected, and give a certificate accordingly.

#### ELECTIONS—TERM OF TRUSTEES.

(Acts 1901, p. 415, Sec. 6989.)

**364. When term of Trustee begins.** The terms of all Township Trustees and assessors shall begin on the first day of January succeeding their elections.

**364a.**

#### PRIMARY ELECTIONS.

(Acts 1915, p. 359.)

The primary election act of 1915 requires the trustee to post in three public places in each precinct of his township, copies of the notice of the holding of such election, which notice the law provides shall be mailed to the Trustee by the clerk of the circuit court, designating in such notices the location of the polling booth in each precinct, the date of the primary and the hours during which polls will be open.

#### FLOOD-GATES, PETITION, CONSTRUCTION, COST.

(Acts 1903, p. 121, Sec. 6169.)

**365. Jurisdiction and duty of Trustee to construct.** Whenever the lands drained by a ditch, which has its outlet in a stream or watercourse, is so situated that the water from such stream or watercourse in high water will back up and through such ditch, and overflow such lands drained thereby before such stream or watercourse overflows its banks, it shall be the duty of the Township Trustee in any township where such ditches and watercourses and streams exist, upon the petition of a majority of the persons owning lands benefited by said ditch, to build suitable and sufficient flood-gates at the outlet of such ditch or near enough thereto to prevent the water from said stream or watercourse flowing into said ditch and from said ditch to the low lands lying along the line thereof before the said stream or watercourse overflows its banks: Provided, That cost thereof shall not exceed five per cent. of the assessed value of the property benefited.

(Acts 1903, p. 121, Sec. 6170.)

**366. Remonstrance—Hearing by the Trustee.** Upon the filing of such petition with the Trustee of such township, such Trustee shall cause to be posted in three conspicuous places in said township notices of the filing of such petition, and such notices shall state the time and

place of the hearing of said petition, which notices shall be posted not less than ten days before the time of hearing, and upon the day set for the hearing he shall consider any remonstrance that may be filed, and shall determine whether such flood-gate shall be constructed. In case he shall determine that it is of benefit to the owners of the lands along the line of such ditch, he shall order the flood-gate to be constructed upon such plans as shall in his opinion be sufficient for the purpose.

(Acts 1903, p. 121, Sec. 6171.)

**367. Trustee's further duties—Superintendent—Assessments.** Such flood-gates shall be constructed under the supervision of said Township Trustee, and the cost thereof shall be assessed against the owners of the lands benefited by such ditch, and such land shall be assessed for the cost of the construction thereof in proportion to the actual benefits to the lands affected thereby. Such assessments shall be certified by said Trustee to the county auditor, who shall certify them to the treasurer of such county, and such treasurer shall proceed to collect the same as taxes are collected.

(Acts 1903, p. 121, Sec. 6172.)

**368. Right of appeal to circuit court—Remonstrance.** Any person aggrieved by the action of the Trustee in regard to the establishing of such floodgate, or refusing to establish the same, or by the assessment of the cost thereof, may remonstrate and appeal from the decision of such Trustee to the circuit court, and proceedings in regard to the same shall be controlled by the law regulating remonstrances and appeals in the law provided for the establishment of ditches.

#### **RATS—EXTERMINATION.**

(Acts 1913, p. 638, Sec. 7648j.)

**369. Rats—Extermination—Teaching hygiene in schools.** It shall be unlawful for any person, firm, copartnership, company or corporation owning, leasing, occupying, possessing or having charge of any land, place, building, structure, stacks or quantities of wood, hay, corn, wheat or other grains or materials, or any vessel or water craft, to permit the same to become rat infested, and it shall be the duty of any such person, firm, copartnership, company, or corporation, upon any knowledge or notice, to at once proceed and to continue in good faith to endeavor to exterminate and destroy such rats by poisoning, trapping and other appropriate means, such as may be suggested by the state board of health or the local health officers. And it shall be the duty of the Trustees of the several townships and the boards of School Trustees of the several cities and towns in the State, to make provisions in the public schools under their jurisdiction for the illustrative teaching of the anatomy, physiology and hygiene of the human system; the effect of alcohol and nicotine; the cause and course of consumption; the dissemination of diseases by rats, flies and mosquitoes and the effects thereof, and the prevention of diseases by the proper selection and consumption of food.



**FISH LADDERS.**

(Acts 1885, p. 51, Sec. 7442.)

**370. Law as to requirement of fish ladders—Mill dams.** Under act 1885, it is required that all owners of mill dams over four feet in height shall construct and maintain fish ladders to allow fish below the dam to pass over into the waters above.

(Section 7443.)

**371. When Trustee shall erect fish ladders.** If the owners of such dam fail or refuse to comply with this requirement, it devolves upon the Township Trustee to construct and erect such ladder, in such manner and of such material as shall be directed by the commissioner of fish and game.

Likewise, if any such fish ladder shall get out of repair, and such owner shall fail to repair same for 30 days, it becomes the duty of the Trustee to cause such repairs to be made, and collect the cost thereof from such owners.

**CANADA THISTLES.**

(Acts 1907, p. 50, Sec. 7812.)

**372. Duty of Trustee upon written notice of supervisor.** Upon information being given the road supervisor that Canada thistles to height of six inches are being allowed to grow upon the premises of any owner within his road district, it becomes his duty to enter upon the premises of such owner, and it being ascertained that such information is true, the road supervisor shall notify such owner, his agent or tenant, demanding that all of such Canada thistles be cut off below the surface of the ground, within five days. If at the end of such time such thistles have not been removed such supervisor shall report the matter, in writing, to his Township Trustee.

It then becomes the duty of the Trustee, immediately upon receipt of the report of the road supervisor, to cause the reported thistles to be cut as herein provided; and shall assign this work and their removal to such road supervisor.

Should the supervisor decline to do such work, the Trustee shall employ one resident of the township to perform such cutting and removal, and he may enter such lands for such purpose and shall not be deemed a trespasser.

The Trustee, with the advice of the advisory board, shall pay for such work. When allowed it becomes the duty of the Trustee to file a claim therefor with the county auditor, who places such sum on the tax duplicate where it becomes a lien on the land as other taxes.

The compensation for the person selected to do such work is fixed by the statute at 20 cents per hour for the time actually employed. He must file with the Trustee his itemized claim for such work.

**STATE FIRE MARSHAL.**

(Acts 1913, p. 556, Sec. 7441d.)

**373. Trustees act as assistant fire marshal.** The act 1913, establishing the office of state fire marshal, providing for the maintenance of his offices and defining his powers, provides, among other things, viz.:

All municipal fire marshals in those municipalities having such officers, and, where no such officer exists, the chief of the fire department of every incorporated city or town in which a fire department is established, the clerk of each incorporated town in which no fire department exists, and the Township Trustee of each township for the territory of said township lying outside of the corporate limits of any city or town, shall be, by virtue of said office so held by them, assistants to the state fire marshal and subject to the duties and obligations imposed by this act, and shall be subject to the directions of the state fire marshal in the execution of the provision hereof. Immediately upon taking office, the state fire marshal shall prepare instructions to the assistants designated herein and forms for their use in the reports required by this act and cause them to be printed and sent, together with a copy of this act, to each such officer located in this State.

(Section 7441e.)

**374. Duties of Trustee as assistant fire marshal—Report of fires.** The assistants to the state fire marshal as defined in the preceding section shall investigate the cause, origin and circumstances of every fire occurring in any city or town or territory in any township lying outside the corporate limits of any city or town in this State, by which property has been destroyed or damaged, and, so far as it is possible, determine whether the fire was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of such fire by the assistant in whose territory such fire has occurred, and if it appears to the officer making such investigation that such fire is of suspicious origin, the state fire marshal shall be immediately notified of such fact. Every fire occurring in this State shall be reported in writing to the state fire marshal within ten days after the occurrence of the same by the officer designated in section 4 of this act in whose jurisdiction such fire has occurred; such report shall be in the form prescribed by the state fire marshal and shall contain a statement of all facts relating to the cause and origin of such fire that can be ascertained, the extent of damage thereof and the insurance upon such property, and such other information as may be required.

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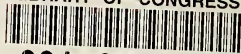








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